

TABLE OF CONTENTS

GLOSSARY 11

1	INTRODUCTION	15
1.1	Workers' Compensation Appeal System	15
1.2	The Manual of Rules of Practice and Procedure	15
1.3	Role of WCAT	16
1.4	Guiding Principles	16
1.5	Administrative Law Concepts	16
1.5.1	Introduction	16
1.5.2	Jurisdiction of Tribunals	16
1.5.3	Procedural Fairness	17
1.5.3.1	The Right to be Heard	17
1.5.3.2	The Right to a Decision from an Unbiased Decision Maker	18
1.5.3.3	The Right to a Decision from the Person who Hears the Case	18
1.5.3.4	Fettering Discretion	19
1.5.3.5	The Right to Reasons	19
1.5.3.6	Failing to Decide a Matter (Missed Issue)	20
1.5.3.7	Effect of a Breach of Procedural Fairness	20
2	STRUCTURE OF WCAT	21
2.1	Composition	21
2.2	Role of the Chair	21
2.2.1	Delegation by the Chair	22
2.2.2	Incapacity of the Chair	22
2.3	Vice Chairs	22
2.3.1	Incapacity of Vice Chairs and Members	22
2.4	Tribunal Counsel Office	23
2.5	Registrar's Office	23
2.6	Officers of WCAT	23
2.7	Panels	24
2.7.1	Three Member Non-Precedent Panels	24
2.7.2	Precedent Panels	24
2.7.3	Presiding Member	25
2.7.4	Single Member Panel Unable to Complete Duties	25
3	JURISDICTION	27
3.1	General	27
3.1.1	Compensation Issues	28
3.1.2	Employer Issues Concerning Assessments and Monetary Penalties	28
3.1.3	Occupational Health and Safety Issues and Monetary Penalties	29
3.1.4	Direct Appeals	29
3.1.5	Certification to Court (18)	30
3.1.6	Application for Reconsideration (20.2.1 and 20.2.2)	30
3.2	Matters Not Appealable to WCAT	30

3.2.1	Preliminary or Procedural Decisions by a Review Officer	30
3.2.2	Orders under the Occupational Health and Safety Provisions	31
3.2.2.1	Order Later Relied Upon to Impose an Administrative Penalty	31
3.2.3	Other Substantive or Merit Decisions of a Review Officer	31
3.3	Scope of Appeal	32
3.3.1	Issues in Decision(s) Appealed	32
3.3.2	Termination of Short-term Disability (Wage Loss) Benefits	32
3.3.3	Personal Injury (Section 134) and Occupational Disease (Section 136).....	32
3.3.4	Entitlement to Interest	33
3.3.5	Unappealed Decisions	33
3.3.6	Adverse Effect.....	33
3.3.7	Other Claim Files Involving the Same Worker.....	34
3.4	Other Matters	34
3.4.1	Constitutional Questions and <i>Human Rights Code</i>	34
3.4.2	Administrative Tribunals Act (ATA)	34
3.4.3	Regulations	35
4	WHO MAY APPEAL	37
4.1	Workers' Compensation	37
4.2	Employer Assessment and Classification.....	37
4.2.1	Employer Cost Transfer Appeals (Section 249)	37
4.3	Occupational Health and Safety	37
4.4	Prohibited Action	38
4.5	Reopening on Application.....	38
4.6	Deceased Worker – Standing of Estate.....	38
4.7	Employer Standing	39
4.7.1	Employer of Record	39
4.7.1.1	Change in Status.....	39
4.7.2	Other Employers	39
4.7.3	Deemed Employers.....	40
4.7.3.1	Organized Groups of Employers	40
4.8	Who May Respond.....	40
4.9	Workers Employed by the Government of Canada and Federal Government Bodies	
	40	
5	HOW TO APPEAL	42
5.1	Initiating an Appeal.....	42
5.1.1	Notice of Appeal Must Be in Writing.....	42
5.1.2	Telephone Notification of Intent to Appeal	43
5.1.3	Incomplete Notice of Appeal	43
5.1.3.1	Withdrawal of Incomplete Appeal.....	43
5.1.4	Decision or Order Appealed	43
5.1.5	Outcome Requested	44
5.1.6	Procedure – Constitutional Issues and <i>Human Rights Code</i>	44
5.1.6.1	Who May Raise Constitutional Issues.....	44
5.1.6.2	When to Raise Constitutional or <i>Human Rights Code</i> Issues	44

5.1.6.3	Order of Consideration of Issues.....	44
5.1.6.4	Compliance with the <i>Constitutional Questions Act</i>	45
5.1.6.5	Disclosure to Attorneys General and Submission Process	46
5.2	Authorizations.....	46
5.2.1	For Representatives to Act (6.3.1)	46
5.2.2	For WCAT to Obtain Evidence (9.3 to 9.3.3).....	46
5.3	Service and Delivery of Documents.....	46
5.3.1	Change of Address	47
5.3.2	Returned Mail.....	48
6	REGISTRATION OF APPEALS.....	49
6.1	Registration	49
6.2	Acknowledging Receipt	49
6.3	Representatives	49
6.3.1	Representative Authorizations	49
6.4	Board Notification	51
6.5	Notification of Respondents (4.8)	51
6.5.1	Participating Respondents	51
6.5.2	Non-Participating Respondents.....	52
6.5.3	Unregistered Employer Charged with Claims Costs (Section 263)	52
6.5.4	Certificate Appeals (Sections 55, 58 and 59)	52
6.6	Participating Person/Representative Group	52
6.6.1	In Assessment Appeals.....	52
6.6.2	In Employer Relief of Costs Appeals (Section 240(1)(d)).....	53
6.6.3	In Employer Cost Transfer Appeals (Section 249)	53
6.6.4	In Administrative Penalty Appeals (Section 95).....	53
6.6.5	In Certificate Appeals (Sections 55, 58 and 59).....	53
6.6.6	Other	53
6.6.7	Participation by the Board	53
6.7	Posting a Notice in Occupational Health and Safety Appeals	54
7	PRELIMINARY PROCESSES	55
7.1	Streaming: Regular or Specialty	55
7.2	Joining or Combining Appeals.....	55
7.2.1	Joining Appeals Regarding the Same Worker.....	55
7.2.2	Combining Appeals	55
7.3	Facilitated Settlement and Alternative Dispute Resolution (ADR)	56
7.3.1	Mediation.....	56
7.4	Pre-Hearing Conferences.....	57
7.5	Appeal Method	58
8	SUMMARY DECISIONS.....	59
8.1	Dismissing Appeals	59
8.2	Extending the Time to Appeal	59
8.2.1	Application for Extension of Time.....	60
8.2.2	Special Circumstances Precluded.....	60

8.2.2.1	Representative Acts or Omissions	61
8.2.3	Injustice	61
8.3	Stay of Decision under Section 294.....	62
8.3.1	Application for Stay of Decision.....	62
8.4	Suspension of an Appeal.....	63
8.4.1	Suspension for Referral of an Undetermined Matter Back to the Board under Section 297(3)	63
8.4.2	Suspension to Obtain Independent Health Professional Advice under Section 302	64
8.4.3	Suspension for Referral to the Chair for Lawfulness of Policy under Section 304	64
8.4.4	Suspension Pending a Board Decision on a Related Matter under Section 305	64
8.5	Withdrawals.....	65
9	NATURE OF WCAT PROCEEDINGS	67
9.1	General Principles	67
9.2	Panels' Authority	68
9.3	Panel Inquiries.....	69
9.3.1	Investigation by the Board under Section 297(2)(b)	69
9.3.2	Other Panel Inquiries under Section 297(2)(a).....	69
9.3.3	Panel Site Visit.....	69
9.4	Statutory Provisions affecting WCAT Deliberations.....	70
9.4.1	Merits and Justice	70
9.4.2	Application of Policy	70
9.4.3	Legal Precedent Not Binding.....	70
9.4.4	Except Precedent Panel Decisions	71
10	SECTION 304 REFERRAL TO THE CHAIR FOR LAWFULNESS OF POLICY	72
10.1	Referral Process.....	72
11	EVIDENCE	75
11.1	Introduction.....	75
11.2	Types of Evidence	75
11.3	Relevance	76
11.4	Admissibility.....	76
11.4.1	Categories of Privilege	76
11.4.2	Evidence Received in Confidence.....	77
11.5	Weight, Credibility and Reliability	77
11.5.1	Weight.....	77
11.5.1.1	Leading Questions	78
11.5.2	Credibility	78
11.5.3	Reliability.....	78
11.6	Expert Evidence	79
11.7	Orders (Subpoenas) for the Production of Existing Evidence and Attendance of Witnesses.....	80

11.7.1	Depositions	82
11.7.2	Non-Participating Party	82
11.7.3	Failure to Comply	82
11.7.4	Freedom of Information and Protection of Privacy Act (FIPPA)	82
11.8	Production of Evidence by the Board	82
11.9	Documents in Languages other than English	83
12	INDEPENDENT MEDICAL ASSISTANCE OR ADVICE (IHP PROCESS)	84
12.1	General.....	84
12.2	Selection of Health Professionals	84
12.2.1	Remuneration.....	84
12.2.2	Form of IHP	85
12.2.3	Exclusions	86
12.3	Terms of Reference.....	86
12.4	Suspension Pending Health Professional’s Report	86
12.5	Medical Examination	87
12.5.1	Expenses for Medical Examination	87
12.5.2	Failure to Attend or Obstruction of the Examination.....	87
12.6	Written Report	87
12.7	Decision.....	88
12.8	Other Medical Advice or Clarification.....	88
13	WRITTEN SUBMISSIONS.....	89
13.1	Filing Submissions.....	89
13.1.1	Submission Process.....	89
13.1.2	General	90
13.1.3	Submissions Complete	90
13.1.4	Late or Unsolicited Submissions	91
13.2	New Evidence Obtained by the Panel	91
13.3	Avoidance of Third Party Personal Information and Identifiers (15)	91
14	ORAL HEARINGS	93
14.1	Before the Oral Hearing.....	93
14.1.1	Practice Directive on Scheduling.....	93
14.1.2	Postponements	93
14.1.3	Communication of the Postponement Decision.....	94
14.1.4	New Documentary Evidence	94
14.2	Attendance at the Oral Hearing	95
14.2.1	Presence of the Appellant.....	95
14.2.1.1	Presence of the Appellant’s Representative	95
14.2.2	Late Appearance.....	95
14.2.3	Failure to Appear for an Oral Hearing	95
14.2.3.1	Appellant	96
14.2.3.2	Adequate Reasons.....	96
14.2.3.3	No Show Decision.....	97
14.2.3.4	Respondent.....	97

14.2.4	Attendance by Telephone, Videoconference or Other Electronic Means	97
14.3	Procedure at the Oral Hearing.....	98
14.3.1	Conduct of Oral Hearings.....	99
14.3.2	Maintaining Order at the Oral Hearing	99
14.4	Who May Attend the Oral Hearing.....	100
14.4.1	Representatives	100
14.4.2	Witnesses (11.7).....	101
14.4.2.1	Affirmation or Oath (Appendix 8).....	101
14.4.3	Interpreters (11.9)	101
14.5	Record of the Oral Hearing.....	102
14.6	Unsolicited Post-Hearing Evidence or Submissions	102
14.7	New Evidence Obtained by the Panel	103
15	CONFIDENTIALITY	104
15.1	Freedom of Information and Protection of Privacy Act (FIPPA).....	105
15.1.1	<i>Freedom of Information and Protection of Privacy Act (FIPPA) and WCAT Proceedings (13.3)</i>	105
15.2	Disclosure to Third Parties	106
16	EXPENSES AND COSTS	107
16.1	Expenses.....	107
16.1.1	General	107
16.1.2	Parties' Attendance at Oral Hearings	108
16.1.2.1	Travel Expenses	108
16.1.2.2	When the Oral Hearing does not Proceed	108
16.1.2.3	When the Appellant has Moved	109
16.1.3	Reimbursement of Expenses (Witness and Other Evidence) (Section 7(1)(b) of the Appeal Regulation).....	109
16.1.3.1	Reimbursement of Expenses for Expert Evidence	109
16.1.3.1.1	Attendance of an Expert at an Oral Hearing.....	110
16.1.3.2	Evidence Previously Submitted to the Board	111
16.1.4	Representatives' Fees	111
16.1.5	WCAT Investigations.....	111
16.2	Costs	111
16.2.1	Legal Costs	111
17	WCAT DECISION MAKING.....	113
17.1	Time Frame for Decision Making.....	113
17.1.1	General	113
17.1.2	Extension of Time for Complexity.....	113
17.2	The Written Decision	113
17.2.1	Hallmarks of Quality Decision Making	113
17.2.2	Decision-Making Principles	114
17.2.2.1	Disclosure of Prior Decisions	115
17.3	Reasonable Apprehension of Bias and Conflict of Interest.....	115

17.3.1	Reasonable Apprehension of Bias	115
17.3.2	Conflict of Interest	116
17.3.3	Procedure.....	116
17.4	Appeal Outcome.....	117
17.4.1	Findings versus Recommendations	117
17.4.2	Signing Decisions.....	118
17.5	Notice of Decision.....	118
17.5.1	Filing Final Decision in Supreme Court	118
18	CERTIFICATIONS TO COURT	119
18.1	Introduction.....	119
18.2	Jurisdiction	119
18.2.1	General	119
18.2.2	Definition of Court and Action.....	119
18.2.3	Scope of Determination(s).....	119
18.3	Who May Apply	120
18.3.1	Deceased Person – Standing of Estate	120
18.3.2	Who May Respond.....	120
18.4	Preliminary Matters.....	120
18.4.1	Court Action Prohibited (Statutory Bar)	120
18.4.2	Application for Compensation	121
18.4.3	Registration with the Board as an Employer	121
18.5	How to Apply	121
18.5.1	Initiating an Application	123
18.5.1.1	Notice of Application Must Be In Writing	123
18.5.1.2	Incomplete Notice of Application	123
18.5.1.3	Determination(s) Requested	123
18.5.2	Authorizations	124
18.5.2.1	For Representatives to Act.....	124
18.5.2.2	For WCAT to Obtain Evidence	124
18.5.3	Service and Delivery of Documents	124
18.5.3.1	Service and Delivery of Documents by WCAT to Parties.....	124
18.5.3.2	Service and Delivery of Forms, Correspondence, Submissions, and Evidence by Representatives on Other Participants.....	124
18.5.3.3	Service and Delivery of Forms, Correspondence, Submissions, and Evidence by Parties to WCAT.....	125
18.6	Registration of Applications	125
18.6.1	Registration	125
18.6.2	Acknowledging Receipt.....	125
18.6.3	Representatives	125
18.6.4	Board Notification.....	125
18.6.4.1	Board Subrogation to Rights of Worker to Pursue Court Action.....	126
18.6.4.2	Disclosure of Board Claim Files	126
18.6.5	Notification of Respondents	126
18.6.5.1	Participating Respondents	126
18.6.5.2	Non-Participating Respondents.....	127
18.6.6	Notification of Interested Person(s)	127

18.6.7	Participating Person/Representative Group	127
18.7	Preliminary Processes.....	127
18.7.1	Usual Processes Apply	127
18.7.2	Streaming: Specialty	127
18.7.3	Joining Applications	128
18.7.3.1	Related Court Actions	128
18.7.3.2	Related Appeals.....	128
18.8	Order of Processing.....	128
18.8.1	General	129
18.8.2	Holding Period.....	129
18.8.3	Request for Priority Processing.....	131
18.9	Summary Decisions.....	131
18.9.1	Stay of Decision	132
18.9.2	Withdrawals.....	132
18.9.2.1	Withdrawal by Applicant.....	132
18.9.2.2	Deemed Withdrawal.....	132
18.9.2.3	Effect of New Application	132
18.10	Written Submissions and Evidence	132
18.10.1	Transcripts of Examinations for Discovery	133
18.10.2	Copies of WCAT Decisions, Board Policies and Court Decisions	134
18.11	Oral Hearings	134
18.12	Confidentiality.....	134
18.13	Expenses and Costs.....	134
18.14	WCAT Determination(s)	134
18.14.1	Effect of Determination(s) on Court Action.....	135
18.14.2	Post-Determination	135
19	PUBLIC ACCESS TO WCAT DECISIONS	136
19.1	General.....	136
19.2	Writing Decisions Without Identifiers	136
19.2.1	Confidentiality and Privacy.....	136
19.2.2	Names.....	136
19.2.3	Representatives	137
19.2.4	File or Appeal Numbers	137
19.2.5	Payroll, Revenue Data, and Salary Information	137
19.2.6	Geographic Locations	137
19.2.7	Quotations.....	138
19.2.8	Corrections or Revisions – Inadvertent Error	138
19.2.9	Certification to Court	138
19.2.10	Second Level of Editing in Limited Circumstances.....	138
19.2.11	Exception	138
19.3	Noteworthy Decisions.....	139
20	POST-DECISION	140
20.1	Amendments to Final Decisions	140
20.1.1	Corrections.....	140
20.1.2	Clarifications.....	141

20.1.3	Incomplete Decision	141
20.2	Reconsideration of Final Decisions	141
20.2.1	Reconsideration Based on New Evidence (Section 310)	141
20.2.2	Reconsideration to Cure a Jurisdictional Error	141
20.2.2.1	Limits on WCAT's Reconsideration Power	142
20.2.3	Reconsideration on Both Grounds	142
20.2.4	Time Limit.....	143
20.2.5	One Time Only	143
20.3	Reconsideration Applications	143
20.3.1	Reconsideration not to Proceed	144
20.3.2	Reconsideration to Proceed	144
20.4	Judicial Review.....	145
20.4.1	Reconsideration and Judicial Review.....	145
20.4.2	Time Limit for bringing a Judicial Review	145
20.4.3	Standards of Review	145
20.4.4	Publication of Judicial Review Decisions.....	146
20.5	Effect of Application for Reconsideration or Petition for Judicial Review	146
21	CODES OF CONDUCT	147
21.1	For Parties	147
21.1.1	General	147
21.1.2	Duties of a Party.....	147
21.2	For Representatives	148
21.2.1	General	148
21.2.2	Duties of a Representative	149
21.3	For WCAT Members.....	151
21.3.1	Involvement in Legal Proceedings	151
21.4	For WCAT Employees.....	151
	Appendix 1 A Short History of the Workers' Compensation Appeal System	152
	Appendix 2 Rules	153
	Appendix 3 Practice Directives.....	154
	Appendix 4 Regulations	156
	<i>Workers Compensation Act Appeal Regulation, Order in Council No. 1039/2002 (B.C. Reg. 321/2002)</i>	156
	<i>Transitional Review and Appeal Regulation, Order in Council No. 1040/2002 (B.C. Reg. 322/2002)</i>	160
	<i>Fishing Industry Regulation, Order in Council No. 1041 (B.C. Reg. 323/2002) and Order in Council No. 1150 (B.C. Reg. 384/2002)</i>	162
	Appendix 5 Standing of an Estate – Statutory Declarations	163
	Appendix 6 Combined Appeals – Authorization to Release Information	166

Appendix 7 Orders (to Testify and for the Production of Documents) 168

Appendix 8 Oaths and Affirmations 173

Appendix 9 Current Fee Schedules 175

Appendix 10 Code of Conduct for WCAT Members 176

GLOSSARY

“ADR”	means alternative dispute resolution.
“allow”	means the WCAT panel disagrees with the determination made on an issue covered by a decision or order under appeal, or grants the remedy requested in an application.
“appeal”	includes an application.
“Appeal Division”	means former Appeal Division of the Workers’ Compensation Board (Board).
“Appeal Regulation”	means <i>Workers Compensation Act Appeal Regulation</i> , (Order in Council No. 1039/2002 (B.C. Reg. 321/2002)).
“appellant”	includes applicant.
“application”	includes an application for an extension of time to appeal, an application for reconsideration of a WCAT decision, and an application for a Certification to Court under section 311.
“at least”	when referring to the calculation of time, means that the first and last days are not included.
“ATA”	means <i>Administrative Tribunals Act</i> , S.B.C. 2004, c. 45, as amended by the <i>Administrative Tribunals Statutes Amendment Act, 2015</i> .
“Amendment Act”	means <i>Workers Compensation Amendment Act, 2002</i> , S.B.C. 2002, c. 56.
“Amendment Act No. 2”	means <i>Workers Compensation Amendment Act (No.2), 2002</i> , S.B.C. 2002, c. 66.
“Board”	means Workers’ Compensation Board, now operating as WorkSafeBC.
“board of directors”	means board of directors of the Board.
“Cabinet”	means Lieutenant Governor in Council.
“cancel”	means that the WCAT panel disagrees with a decision under appeal and determines that the decision should be set aside without a new or changed decision being substituted.

“chair”	means head of WCAT appointed under section 278(2)(a) who has all the powers of the chair set out in Part 7 of the WCA [s. 277].
“Commissioners”	means former governing body of the Board, prior to June 3, 1991.
“confirm”	means that, on every issue addressed in the WCAT decision, the panel agrees with the determinations made by the prior decision-maker in the decision or order under appeal, though not necessarily with the reasons for those determinations.
“decision”	<p>For the purposes of appeals under Part 4 of the <i>Workers Compensation Act</i> (WCA), a “decision” is a determination of the Board, including the Review Division, to award, deny, reconsider, or limit entitlement to benefits and services, or impose or relieve an obligation pertaining to the WCA or policy. A decision is made, for the purpose of triggering the timelines for appeals and applications, on the date the decision is communicated to the affected person.</p> <p>If the decision is communicated to affected persons on different dates, the statutory timelines commence on the date the decision is first communicated to an affected person.</p>
“deny”	means the WCAT panel agrees with the determination made on an issue covered by a decision or order under appeal, or does not grant the remedy requested in an application.
“FIPPA”	means <i>Freedom of Information and Protection of Privacy Act</i> , R.S.B.C. 1996, c. 165.
“issue”	means each benefit, or each aspect of a benefit or obligation, dealt with in a decision or order where the decision or order includes determinations regarding: different aspects of a benefit or obligation; more than one type of benefit or obligation; or, determinations regarding the same benefit or obligation at different places or times.
“member of family”	means (a) a spouse, parent, grandparent, stepparent, child, grandchild, stepchild, sibling or half sibling, and

(b) a person who stood in the place of a parent to the worker or to whom the worker stood in place of a parent, whether related to the worker by blood or not [s. 1].

“members of WCAT”	means chair, vice chairs, and temporary substitute members appointed under section 278(2) [s. 277].
“minister”	means the Minister Responsible for Labour.
“officer of WCAT”	means senior registry officer, assessment officer, appeal coordinator, or legal counsel.
“party”	means person who may bring or respond to an appeal [s. 291].
“practice directive”	means italicized MRPP item that is consistent with the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1, and its regulations, and the <i>Administrative Tribunals Act</i> , S.B.C. 2004, c. 45, which provides guidance and is not binding on WCAT.
“presiding member”	means the WCAT member (either the chair or any vice chair) chairing a panel [s. 277].
“procedural fairness”	means procedural fairness and natural justice.
“Review Board”	means former Workers’ Compensation Review Board.
“Review Division”	means Review Division of the Board.
“rule”	means bolded MRPP item respecting practice and procedure that facilitates the just and timely resolution of matters before WCAT. Rules are binding, but WCAT may waive or modify a rule in exceptional circumstances.
“section” (or “s.”)	means section of the WCA, unless context otherwise indicates.
“senior vice chair”	means the tribunal counsel and the registrar. Reference to “a senior vice chair” means either of these two positions. Otherwise, references to senior vice chair will be abbreviated to refer specifically to the tribunal counsel or the registrar.
“Supreme Court Rules”	means <i>Supreme Court Civil Rules</i> , B.C. Reg. 168/2009.
“TCO”	means tribunal counsel office.

- “vary”** means that, on one or more issues addressed in the WCAT decision, the panel reaches a conclusion which differs in whole or in part from the conclusion or outcome provided by the prior decision-maker and provides a changed decision.
- “vice chair”** means a WCAT decision maker (not an officer), appointed by the chair, after consultation with the minister, under section 278(2)(b) to make decisions on appeals to WCAT, and whose position is not representative of employers’ or workers’ interests.
- “WCA”** means *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

1 INTRODUCTION

1.1 Workers' Compensation Appeal System

In the province of British Columbia, the *Workers Compensation Act* (WCA) establishes two levels for review or appeal of decisions by officers of the Workers' Compensation Board, operating as WorkSafeBC (Board). The first level is an internal review by a review officer of the Review Division of the Board (Review Division). The second level is an external appeal to the Workers' Compensation Appeal Tribunal (WCAT). WCAT is headed by a chair appointed by the Lieutenant Governor in Council (the Cabinet). The Review Division and WCAT were established effective March 3, 2003. (See Appendix 1 for a short history of the workers' compensation appeal system.)

1.2 The Manual of Rules of Practice and Procedure

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

Section 11 of the *Administrative Tribunals Act* (ATA) and section 280 of the WCA allow WCAT to control its processes and to make rules and issue practice directives respecting practice and procedure "to facilitate the just and timely resolution of the matters before it," the "efficient and cost effective conduct of appeals," and the "efficient operation of the appeal tribunal."

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

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

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

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

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

1.3 Role of WCAT

Section 278(1) establishes WCAT as an external appeal body, independent of the Board. While independent, WCAT is part of the workers' compensation system and must apply policies of the board of directors subject to the process set out in section 304 for determining the lawfulness of a policy.

1.4 Guiding Principles

WCAT will strive to provide:

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

1.5 Administrative Law Concepts

1.5.1 Introduction

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

1.5.2 Jurisdiction of Tribunals

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

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

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

1.5.3 Procedural Fairness

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

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

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

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

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

1.5.3.1 The Right to be Heard

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

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

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

1.5.3.2 The Right to a Decision from an Unbiased Decision Maker

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

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

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

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

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

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

This principle also recognizes the balance between safeguarding the independence of decision makers and the value of consistency in decision making. In *Consolidated-Bathurst Packaging Ltd. v. International Woodworkers of America et al*, [1990] 1 S.C.R. 282, the Supreme Court of Canada concluded that this principle was not

compromised when a tribunal held a full board meeting for the purpose of discussing policy issues arising from a specific case. As long as the issues of fact were not discussed at the full board meeting, the meeting was entirely voluntary, the discussion was limited to questions of law and policy, and the decision makers remained free to decide based on their conscience and their understanding of the facts and law, the practice was not unfair.

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

1.5.3.4 Fettering Discretion

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

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

Sections 339(2) and 303(2) provide that the Board and WCAT are required to consider each appeal on its own merits and justice but, in so doing, must apply a policy of the board of directors that is applicable in the appeal. The common law restriction on fettering discretion has therefore been modified for the workers’ compensation system by sections 339(2) and 303(2). (See also s. 286(6) of the WCA.)

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

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

1.5.3.5 The Right to Reasons

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

WCAT is statutorily required to provide reasons [s. 306(3)], but the extent to which reasons must be given depends on the circumstances of each case. In *Baldwin v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2007 BCSC 942, followed in *Schulmeister v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2007 BCSC 1580, the British Columbia Supreme Court said that “reasons must be sufficient to allow the parties involved to understand the decision maker’s reasoning and to provide enough information for an appeal, if one is desired, but should not be held to a standard of perfection.” In *Wyant v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2006 BCSC 680, the Court also held it was proper for WCAT to incorporate the reasons of both the Review Division and Board below as its own where the decision maker agreed with them.

1.5.3.6 Failing to Decide a Matter (Missed Issue)

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

1.5.3.7 Effect of a Breach of Procedural Fairness

Failure to observe the administrative law requirements for fair procedure may result in a court setting aside, or declaring void, a tribunal’s decision and sending it back for the tribunal to reconsider after a fair hearing. Accordingly, on reconsideration of a WCAT decision, WCAT will set aside decisions of panels that are procedurally unfair (20.2.2). This authority is also recognized in the WCA [s. 307(5)].

2 STRUCTURE OF WCAT

2.1 Composition

WCAT consists of the chair together with vice chairs and any temporary substitute members [s. 277].

2.2 Role of the Chair

The WCAT chair is responsible for the general operation of WCAT [s. 280(1)]. The chair's responsibilities include [s. 280(2)]:

- a) appointing vice chairs in accordance with any procedures or requirements prescribed by the Lieutenant Governor in Council;
- b) establishing quality adjudication, performance and productivity standards for members of the appeal tribunal and regularly evaluating the members according to those standards;
- c) developing a 3 year strategic plan and an annual operations plan for the appeal tribunal;
- d) establishing any forms, practices and procedures required for the efficient and cost effective conduct of appeals to the appeal tribunal, including
 - i) the time periods within which steps must be taken,
 - ii) requiring pre-hearing conferences, and
 - iii) employing voluntary alternate dispute resolution processes;
- e) making any forms, practices and procedures established under paragraph (d) accessible to the public;
- f) establishing administrative practices and procedures for the effective operation of the appeal tribunal;
- g) providing for public access to decisions of the appeal tribunal in a manner that protects the privacy of the parties to the proceedings;
- h) for the purposes of section 301, establishing a list of health professionals;
- i) presiding over meetings of the appeal tribunal;
- j) establishing panels;
- k) ordering the consideration of related matters in one hearing before the appeal tribunal;
- l) establishing a code of conduct, including conflict of interest provisions, that governs the conduct of the members, officers, employees and contractors of the appeal tribunal;
- m) preparing the annual report of the appeal tribunal;
- n) appointing officers of the appeal tribunal;
- o) for the purpose of judicial proceedings, preparing a certificate attaching the record of the appeal tribunal in the matter of a particular appeal or decision of the tribunal, including any practices and procedures applied by the tribunal.

2.2.1 Delegation by the Chair

The chair may delegate in writing to another member or officer of WCAT a power or duty of the chair, with or without limitations or conditions [s. 281(1)]. If the chair has delegated a power or duty and subsequently ceases to hold office, the delegation continues in effect so long as the delegate holds office or until the delegation is revoked by a new chair [s. 281(2)]. The chair routinely makes a general delegation of authority under various sections of the WCA by issuing a delegation decision which may be found on the WCAT's website at: www.wcat.bc.ca.

The chair must not make a general delegation of authority under sections 304(3), (4) or (5) concerning the chair's review of policies for lawfulness under the WCA, but may delegate this authority to a vice chair or a panel for the purposes of a specific appeal if the chair believes there may be a reasonable apprehension of bias [s. 304(9)].

2.2.2 Incapacity of the Chair

If the chair is absent or incapacitated, the Cabinet may appoint a temporary substitute member to act during the absence or incapacity. The chair may designate another member of WCAT to act in the chair's place during a temporary absence [s. 280(4)].

2.3 Vice Chairs

The chair is responsible for appointments of vice chairs after consultation with the Minister Responsible for Labour, and using a merit based selection process established or approved by the chair [s. 278(6)].

The chair may only appoint a person as a vice chair if the person demonstrates [s. 2(a) to (i) Appeal Regulation] (see Appendix 4):

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

2.3.1 Incapacity of Vice Chairs and Members

If a vice chair of WCAT is absent or incapacitated, the chair may appoint a temporary substitute member [s. 278(9)]. A temporary substitute member must be a person who would otherwise be qualified for appointment as a member.

2.4 Tribunal Counsel Office

Tribunal counsel office (TCO) operates under the direction of the senior vice chair and tribunal counsel (tribunal counsel). TCO is responsible for providing legal support to the chair and the vice chairs, continuing education, the MRPP, responding to inquiries under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and from the Ombudsman, initial review of applications for reconsideration, responding to various complaints, and representing WCAT in the courts on judicial reviews of WCAT decisions.

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

2.5 Registrar's Office

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

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

2.6 Officers of WCAT

The chair may appoint officers of WCAT [s. 234(2)(n)]. The *Labour Relations Code*, R.S.B.C. 1996, c. 244, and the *Public Service Labour Relations Act*, R.S.B.C. 1996, c. 388, do not apply to members or officers of WCAT [s. 278(8)].

The chair has appointed four types of officers of WCAT:

Senior registry officer, who supervises the appeal coordinators, and the registration, scheduling, filing and reception staff. The senior registry officer consolidates related matters into one hearing, suspends and continues appeal proceedings under sections 305(1) and (3), and extends the statutory time frame as provided for under sections 306(6) and (7).

Assessment officers, who assess new appeals to determine whether they meet the requirements in section 292(2)), and are within WCAT's jurisdiction; they make provisional decisions on these matters. They confirm who may bring an appeal (the standing of parties) and determine the appropriate appeal method (i.e., written submissions, oral hearing, specialty stream). They consolidate related matters into one hearing, suspend and continue appeal proceedings under sections 305(1) and (3), and extend the statutory time frame as provided for under sections 306(6) and (7).

Appeal coordinators, who are the primary liaisons between WCAT and all parties to an appeal after assessment to closure. They manage individual caseloads of appeals and ensure that timelines for appeal processing are met. Appeal coordinators also suspend and continue appeal proceedings under sections 305(1) and (3), and extend the statutory time frame as provided for under sections 306(6) and (7).

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

2.7 Panels

Panels decide appeals to WCAT. The chair must establish the panels. A panel has the power and authority of WCAT in considering an appeal [s. 285(8)].

Appeals will normally be heard by a single member panel consisting of the chair or a vice chair [s. 285(4)]

The chair may [s. 285(3)]:

- a) terminate an appointment to a panel;
- b) fill a vacancy on a panel;
- c) refer an appeal that is before one panel to another panel;
- d) if the member of a single member panel is unable to complete their duties, appoint a new panel to continue the appeal, on terms agreed to by all parties [s. 285(11)].

2.7.1 Three Member Non-Precedent Panels

The chair may appoint a three member panel under section 285(5) based on the complexity and significance of the issues raised in an appeal.

2.7.2 Precedent Panels

The chair may appoint a precedent panel where the chair determines that the matters in an appeal are of special interest or significance to the workers' compensation system as a whole [s. 285(6)].

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

If a member of a precedent panel is unable to complete the appeal, the chair may direct the remaining members of the panel to complete the appeal and make the precedent decision [s. 285(10)].

A decision by a panel appointed under section 285(6) sets a precedent which is binding on future WCAT panels, unless [ss. 303(3) and (4)]:

- a) the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances in the panel's decision,
- b) subsequent to the panel's decision, a policy of the board of directors relied upon in the panel's decision is repealed, replaced or revised, or
- c) the prior decision has been overruled under section 303(4).

A panel appointed under section 285(6) may overrule a prior decision of another panel appointed under that section [s.303(4)].

Where a precedent panel makes findings on issues that are not within the scope of its appointment under section 285(6), those findings are not binding. The precedent panel will clearly highlight those portions of its decision which are not intended to be binding.

2.7.3 Presiding Member

Where the panel has three or more members, the chair or a vice chair will be the presiding member. If a panel consists of more than one member, the decision of the majority is the panel's decision. If there is no majority, the decision of the presiding member is the panel's decision [s. 285(9)].

2.7.4 Single Member Panel Unable to Complete Duties

If a single member panel is unable to complete their duties ("original member"), the chair may direct that another panel complete the appeal ("continuing member") [ss. 285(3) and 285(11)].

Generally the continuing member will review all the evidence, submissions and exhibits that were before the original member, including new evidence (if any) sought by the original member, for example, information or determinations requested under sections 297(2)(b), 297(3) and 302.

If the original member held an oral hearing, WCAT will provide the participating parties with the audio recording of that oral hearing. Participating parties will generally be asked to consent to the appeal proceeding by way of the continuing member listening to the audio recording of the original oral hearing and then completing the appeal. If the continuing member considers that further information or submissions are required to complete the appeal, the continuing member may direct a further oral hearing be scheduled or written submission be provided. This may occur where, for example, the audio recording of the original oral hearing is inaudible in part or the continuing member requires further clarification of an issue.

If all parties do not consent to the above process for completing the appeal, the continuing member will conduct a new oral hearing and then complete the appeal.

If a new oral hearing is conducted, generally the continuing member will listen to the audio recording of the original oral hearing. A party may use the audio recording to contradict a witness' testimony during cross-examination. The continuing member will give all parties an opportunity to make submissions on the testimony at the original oral hearing.

If due to mechanical or human failure or other accident the audio recording of the original oral hearing is destroyed or missing, the chair will direct an oral hearing be held before the continuing member [s. 285(3)(c)].

3 JURISDICTION

For detailed information about the Review Division's jurisdiction, see *Review Division Practices and Procedures* on the Board's website at: www.worksafebc.com.

3.1 General

WCAT has jurisdiction to decide a variety of appeals:

- a) A final decision by a review officer respecting a compensation, assessment or occupational health and safety matter [s. 288(1)]. This includes a decision declining to conduct a review under section 268. The time limit for appealing a review officer's decision is 30 days [s. 293(1)].
- b) A determination, an order, a refusal to make an order or a cancellation of an order by a Board officer under section 50 concerning a prohibited action complaint [s. 289(1)]. The time limit for appealing a Board decision under section 50 to WCAT is 90 days [s. 293(2)].
- c) A decision to reopen or not to reopen a matter on an application under section 125(1) [s. 289(2)]. The Board may reopen a claim on its own initiative, or on application if, since the previous decision by the Board (3.1.4):
 - i) there has been a significant change in a worker's medical condition that the Board has previously decided was compensable; or,
 - ii) there has been a recurrence of a worker's injury.Where the Board makes a reopening decision under section 125(1) on application or on its own initiative, the time limit for appealing the Board decision to WCAT is 90 days [s. 293(2)]. Where the Board makes a reopening decision under section 125(1) on its own initiative, a review may be requested from the Review Division within 90 days.
- d) An application under section 293(3) to extend the time for filing a notice of appeal. There is no statutory time limit for initiating such an application.
- e) An application under section 310 for reconsideration of a WCAT decision, or a decision of the former Appeal Division, based on new evidence. There is no statutory time limit for initiating such an application.
- f) An application under section 307(5) for reconsideration of a WCAT decision to cure a jurisdictional error. There is no statutory time limit for initiating such an application.
- g) An application under section 311 for a certificate to the court in a legal action. There is no statutory time limit for initiating such an application (17.1).

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

3.1.1 Compensation Issues

The compensation issues affecting workers for which a review officer's decision is appealable include, but are not limited to:

- a) status as a worker under the WCA [s. 1, s. 126];
- b) a decision to accept or deny a claim for personal injury [s. 134] or occupational disease [s. 136];
- c) duration of wage loss benefits (temporary total disability benefits [s. 191] and temporary partial disability benefits [s. 192]);
- d) duration of permanent partial disability benefits and permanent total disability benefits [s. 201];
- e) average earnings for short and long term wage loss purposes [ss. 208 - 222];
- f) health care, including clothing allowances, personal care expenses or allowances, independence and home maintenance allowances, transportation allowances, subsistence allowances, and homemakers' services (except where such services relate to a vocational rehabilitation program), eyeglasses, prostheses, wheelchairs, hearing aids, crutches [ss. 156-161];
- g) a decision concerning the percentage of a permanent partial disability award based on the application of the Board's rating schedule [s. 195(3)], where the specified percentage of impairment in the schedule has a range that exceeds 5% [s. 288(2)(d)];
- h) the effective date and average earnings calculation of any permanent disability award assessed under the WCA as it read before it was amended by the Amendment Act, 2002;
- i) the effective date of a permanent disability award assessed under the WCA as amended by the Amendment Act, 2002;
- j) permanent disability awards which are not based on the application of the Board's rating schedule (non-scheduled awards);
- k) loss of earnings assessments and awards [s. 23(3)];
- l) disfigurement awards [s. 199];
- m) dependants' benefits [ss. 165-189];
- n) diversion, cancellation, withholding, or suspension of compensation [s. 190, s. 232].

3.1.2 Employer Issues Concerning Assessments and Monetary Penalties

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

- a) relief of claim costs under section 240(1)(c) - disaster fund;
- b) relief of claim costs under section 240(1)(d) - pre-existing disease, condition or disability;
- c) relief of claim costs for experience rating purposes [s. 247(1)-(2)];
- d) charging of claim costs to an unregistered employer [s. 263];
- e) charging of claim costs to an employer due to delayed notification of injury [s. 262(2)];
- f) transfer of claim costs [s. 249];

- g) assessment premiums;
- h) personal optional protection premiums;
- i) employer classification unit;
- j) allocations to or from the reserve in aid of industries or classes which may become depleted or extinguished - section 241(1)(b);
- k) a decision to levy an employer (to the statutory maximum set out in section 251(2)) all or part of the compensation payable to a worker for an injury, death, or disablement from occupational disease, where the Board considers this was due substantially to [s. 251(1), s. 268(1)(c), s. 288(1), s. 291(2)]:
 - i) the gross negligence of an employer;
 - ii) the failure of an employer to adopt reasonable means for the prevention of injuries, deaths or occupational diseases; or,
 - iii) the failure of an employer to comply with the orders or directions of the Board, or with the regulations made under the Occupational Health and Safety (OHS) provisions.

3.1.3 Occupational Health and Safety Issues and Monetary Penalties

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

- a) a decision to confirm, vary or cancel a decision regarding an administrative penalty under section 95 (see s. 268(2)(a));
- b) an order which imposed, or was relied upon to impose, an administrative penalty under section 95(1)[s. 288(2)(b)(i) and (ii)];
- c) an order by a review officer under section 96 to cancel or suspend a certificate under the OHS provisions – that is, of an occupational first aid attendant or instructor [s. 55], or a medical certificate of a worker's fitness for a specific type of work such as diving [s. 58, s. 24.10 of the *Occupational Health and Safety Regulation*], or a certificate of a blaster or blasting instructor [s. 59].

3.1.4 Direct Appeals

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

- a) a prohibited action complaint under section 50, and
- b) an "application" for reopening of a claim under section 125(1) (3.1).

The right of direct appeal from a decision under section 125(1) is limited to situations where the decision follows an "application" by the party rather than a decision on the Board's own initiative. To be considered an "application," the party must refer specifically to section 125(1) or must use substantially similar language and refer to one of the reopening criteria.

When deciding reopening appeals, WCAT determines whether the matter must be reopened or may not be reopened [s. 306(2)(a) and (b)]. Once a claim has been

reopened, an ensuing decision by a Board officer on entitlement is subject to review by the Review Division.

3.1.5 Certification to Court (18)

Under section 311 WCAT has the power to make determinations and provide a certificate to the court in certain matters which are relevant to a legal action.

3.1.6 Application for Reconsideration (20.2.1 and 20.2.2)

Parties may apply for reconsideration of a completed WCAT or Appeal Division decision on the basis of new evidence under section 310. They may also apply for reconsideration of a completed WCAT decision to cure a jurisdictional error.

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

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

3.2 Matters Not Appealable to WCAT

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

3.2.1 Preliminary or Procedural Decisions by a Review Officer

The following classes of decisions respecting the conduct of a review by the Review Division are not appealable to WCAT [ss. 315(a) and 288(2)(a) WCA; ss. 4(a) to (e) Appeal Regulation (Appendix 4)]:

- a) a decision applying a time period specified by the Board under section 338;
- b) an extension of time decision by the chief review officer under section 270(2);
- c) a decision by the chief review officer to deem an employers' adviser or an organized group of employers to be the employer where the employer has ceased to be an employer under section 271(2);
- d) a decision concerning the conduct of a review under section 272(2);
- e) a decision under section 272(3) to complete a review based on information before the review officer, or to determine that the request for review is abandoned;
- f) a decision under section 272(4) to require an employer, who is a party to a review respecting the OHS provisions, to post a notice in a specified form and manner to bring the review to the attention of the employees of the employer;
- g) a decision by the chief review officer under section 272(5) to suspend a review in a specific case in order to allow a review officer to deal with related matters at the same time;

- h) a decision by the chief review officer under section 272(8) to extend the time period for the making of the Review Division decision on the basis that the complexity of the proceedings, or of the matter under review, makes the time period impractical;
- i) an order by the chief review officer under section 270(3) concerning a request for a stay or suspension of the operation of the decision or order under review;
- j) a decision by a review officer about whether or not to refer a decision back to the Board under section 272(9)(b);
- k) a decision respecting the conduct of a review if the review is in respect of any matter that is not appealable to WCAT under sections 288(2)(b) to (e).

3.2.2 Orders under the Occupational Health and Safety Provisions

Any decision respecting an order under the OHS provisions, other than those set out in 3.1.3 above, is not appealable to WCAT [s. 288(2)(b)].

- a) An order concerning the placement of a condition on the use of a certificate under section 96(1)(b)
- b) An order imposing an administrative penalty under section 95(1) (Administrative Penalties – OHS citations).

3.2.2.1 Order Later Relied Upon to Impose an Administrative Penalty

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

3.2.3 Other Substantive or Merit Decisions of a Review Officer

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

- a) decisions respecting vocational rehabilitation [s. 155, s. 288(2)(c)];
- b) in connection with a permanent disability award, a decision respecting the percentage of impairment where this involves the application of a rating schedule compiled by the Board where the specified percentage of impairment in the schedule has no range or has a range that does not exceed 5% [s. 288(2)(d)];
- c) decisions respecting commutations [s. 230, s. 288(2)(e)].

A review officer has authority to review the Board's assignment of an employer to a classification unit but not, except in limited circumstances, an employer's assignment to a class or subclass. The review officer's decision concerning the employer's assignment to a classification unit may be appealed to WCAT. As the class or subclass is not addressed by a review officer, these may not be appealed to WCAT. For a detailed listing of those types of decisions that are not reviewable, see section 268(2).

3.3 Scope of Appeal

3.3.1 Issues in Decision(s) Appealed

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

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

Panels may address an issue raised by the respondent in relation to the decision under appeal. To ensure that the panel will address a particular issue which may not be raised by the appellant, the respondent should file a cross-appeal. This may require an extension of time to appeal (8.2 to 8.2.3).

The panel will normally not address issues not expressly raised by the parties, but has the discretion to do so. The panel will give notice to the parties of the panel's intention to address any issue which was not raised in the notice of appeal or in the parties' submissions to WCAT (1.5.3.1).

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

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

Where a decision terminating a worker's short-term disability (wage loss) benefits is appealed to WCAT, the panel may address any aspect of that decision including whether the worker can return to work. This does not fall within any of the statutory limits on WCAT's jurisdiction. Specifically, it is not a decision respecting matters referred to in section 155 (vocational rehabilitation benefits).

3.3.3 Personal Injury (Section 134) and Occupational Disease (Section 136)

Where a decision denying acceptance of a claim adjudicated under section 136 (occupational diseases) is appealed to WCAT and the panel concludes that it should have been adjudicated under section 134 (personal injury), or vice versa, the panel may address the issue if no further evidence is required and there are no procedural fairness concerns.

3.3.4 Entitlement to Interest

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

3.3.5 Unappealed Decisions

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

3.3.6 Adverse Effect

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

3.3.7 Other Claim Files Involving the Same Worker

A panel may, without notice, review documents from another claim file involving the same worker for relevance. If the panel determines there are relevant documents in another claim file, the procedure set out immediately below will be followed.

A panel may, upon giving notice, rely on relevant documents from any claim file that has or has not previously been disclosed to all parties to an appeal. For example, a worker has appealed a Board decision related to a 2013 injury, and also has a separate claim file with the Board from 2004. If it appears to the panel that some of the documents related to the 2004 injury may be relevant to the current appeal, the panel will give notice to the parties that it intends to rely on relevant documents from the 2004 claim file in coming to a decision. If the documents have not been previously disclosed to the parties, the panel will provide copies of those documents. The panel will then give the parties an opportunity to make submissions regarding those documents. If the documents have been recently disclosed to the parties, the panel may invite submissions directly.

3.4 Other Matters

3.4.1 Constitutional Questions and *Human Rights Code*

WCAT has jurisdiction to decide constitutional issues including application of *Canadian Charter of Rights and Freedoms (Charter): Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, *R v. Conway*, 2010 SCC 22. WCAT also has jurisdiction to apply the *Human Rights Code*, R.S.B.C. 1996, c. 210 [s. 296 WCA].

WCAT can determine if a law or a policy of the board of directors of the Board is inapplicable on constitutional grounds in the particular matter before it, but cannot make a general declaration of constitutional invalidity.

WCAT may grant *Charter* remedies that are linked to a matter properly before it, and that are expressly or impliedly authorized by the WCA or other applicable legislation.

See item 5.1.6 Procedure – Constitutional Issues and *Human Rights Code*.

3.4.2 Administrative Tribunals Act (ATA)

Section 296 sets out the sections of the ATA that apply to WCAT:

- Part 1 – Interpretation and Application
- Section 7.1 – Validity of tribunal acts
- Part 3 – Clustering
- Section 11 – General power to make rules respecting practice and procedure
- Section 13 – Practice directives tribunal may make
- Section 14 – General power to make orders
- Section 15 – Interim orders
- Section 28 – Facilitated settlement

- Section 29 – Disclosure protection
- Section 30 – Tribunal duties
- Section 31 – Summary dismissal
- Section 32 – Representation of parties to an application
- Section 35(1) to (3) – Recording tribunal proceedings
- Section 37 – Applications involving similar questions
- Section 38 – Examination of witnesses
- Section 42 – Discretion to receive evidence in confidence
- Section 48 – Maintenance of order at hearings
- Section 49 – Contempt proceeding for uncooperative witness or other person
- Section 52 – Notice of decision
- Part 8 – Immunities
- Part 9 – Accountability and Judicial Review, except section 59 Standard of review without privative clause
- Section 60(1)(a), (b) and (g) to (i) and (2) – Power to make regulations
- Section 61 – Application of FIPPA

3.4.3 Regulations

The Cabinet may make regulations:

- a) prescribing any decisions or orders under the WCA or the regulations that may be appealed to WCAT, prescribing who may appeal those decisions or orders, and prescribing classes of decisions concerned with the conduct of a review which are not appealable [s. 315(a)];
- b) respecting the awarding of costs in an appeal to be paid by one party to another party [s. 315(b)];
- c) prescribing qualifications of health professionals to provide independent assistance or advice [s. 315(d), s. 301];
- d) prescribing the circumstances under which WCAT may order the Board to reimburse the expenses incurred by a party to an appeal [s. 315(c)];
- e) prescribing an oath of office to be taken by WCAT members before beginning their duties [s. 277(7)];
- f) prescribing any procedures or requirements governing the chair's appointments of vice chairs [s. 280(2)(a)];
- g) prescribing rules of practice and procedure for WCAT [s. 60(1)(a) ATA];
- h) repealing or amending a rule made by WCAT [s. 60(1)(b) ATA];
- i) prescribing the form, manner and timing of reports to the minister responsible for the tribunal [s. 60(1)(g) ATA];
- j) prescribing information that must be included in reports to the minister responsible for the tribunal [s. 60(1)(h) ATA];
- k) prescribing information the tribunal must make public [s. 60(1)(i)].

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

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

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

The Cabinet also ordered the following by regulation:

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

([Appendix 4](#))

4 WHO MAY APPEAL

Only persons directly affected by a decision have standing to appeal [s. 290, s. 291]. To be “directly affected” a person must have a direct and immediate legally material interest in the matter.

4.1 Workers’ Compensation

Persons directly affected by a decision of a review officer concerning compensation are [s. 291(1)]:

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

4.2 Employer Assessment and Classification

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

- a) an assessment or classification matter (including personal optional protection coverage),
- b) a monetary penalty or order to make a payment to the Board concerning the costs of a claim where:
 - i) the employer was not registered with the Board at the time of a worker’s injury or disease [s. 47(2)263];
 - ii) the employer was late in reporting the injury or disease to the Board [s. 262]; or,
 - iii) the injury, death or disablement was due substantially to the fault of the employer as defined in section 251.

are [s. 291(2)]:

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

4.2.1 Employer Cost Transfer Appeals (Section 249)

Both employers are persons directly affected by a decision of a review officer under section 249 respecting claims cost transfer from one employer to another.

4.3 Occupational Health and Safety

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

- a) a Board order,
- b) a refusal to make a Board order,

- c) a variation of a Board order, or
- d) a cancellation of a Board order.

are [s. 290]:

- a) a worker;
- b) an employer (4.7 to 4.7.3.1);
- c) an owner [s. 13];
- d) a supplier [s. 13];
- e) a union [s. 13];
- f) a member of a deceased worker's family.

4.4 Prohibited Action

Persons who may be directly affected by a Board determination, order, refusal to make an order, or cancellation of an order made under section 50 on a prohibited action complaint are [s. 290(2)]:

- a) a worker;
- b) an employer (4.7 to 4.7.3.1);
- c) a union [s. 13].

4.5 Reopening on Application

Persons directly affected by a decision to reopen or not to reopen a claim on an application under section 125 are [s. 291(3)] (3.1.4):

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

4.6 Deceased Worker – Standing of Estate

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

- a) the grant of administration or probate;
- b) a statutory declaration together with a copy of the will if there is a will and probate is not required;
- c) if there is no will, a statutory declaration confirming the estate's representative; or,
- d) documentation regarding an administrator appointed pending legal proceedings.

WCAT does not generally require probate if it is not otherwise required. In order to ensure compliance with time frames for appeals, WCAT may register an appeal pending satisfactory documentation.

For the purposes of this rule, the representative of the estate may be required to provide certified copies of documents.

(See Appendix 5 for examples of statutory declarations that may be used to comply with this rule.)

4.7 Employer Standing

4.7.1 Employer of Record

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

4.7.1.1 Change in Status

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

If the employer of record's status has changed, WCAT will determine whether it continues to have standing to initiate an appeal on the basis that it is directly affected by the decision under appeal. To determine whether an employer has a direct and immediate legally material interest in an appeal, WCAT may obtain evidence from the Board's Assessment Department to determine whether the employer has a direct financial interest in the decision under appeal. Except in appeals of assessment and classification matters under section 291(2), a direct financial effect does not include the potential to affect the employer's classification unit.

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

4.7.2 Other Employers

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

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

4.7.3 Deemed Employers

Where no employer has standing to appeal, WCAT may deem an employers' adviser or an organized group of employers (industry association) to be the employer [s. 300(1)]. In the latter case, the organized group of employers must include employers in the subclass of industry to which the employer, who has ceased to be an employer, belonged [s. 300(2)].

If the Review Division deemed an employers' adviser or an organized group of employers to be the employer, WCAT will deem them to be the employer [s. 300(3)]. If the Review Division did not deem any person to be the employer, WCAT may consider deeming an employers' adviser or an organized group of employers to be the employer where:

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

A deemed employer has standing to initiate an appeal.

4.7.3.1 Organized Groups of Employers

Organized groups of employers who wish to participate in appeals should apply to WCAT in writing and identify:

- a) the employer classifications or sectors for which they would like to participate;
- b) the individual authorized to represent the organized group of employers;
- c) their commitment to comply with sections 235 and 314 concerning the privacy of information on claim files.

4.8 Who May Respond

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

4.9 Workers Employed by the Government of Canada and Federal Government Bodies

The *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 (GECA) does not contain an appeal provision. However, section 4(2) of the GECA provides that employees of the Government of Canada, and members, officers or employees of any department,

corporation or other body that is established to perform a function or duty on the Government of Canada's behalf are entitled to receive compensation under the same provisions as are provided by provincial law. Accordingly, federal government workers and their employers have the same appeal rights as provincially regulated workers and employers.

5 HOW TO APPEAL

There is a 30-day time limit for appealing a decision of a review officer to WCAT. There is a 90-day time limit for appealing a decision of a Board officer concerning a prohibited action complaint [s. 50] or concerning a reopening application [s. 125(1)] to WCAT.

An appeal may be initiated by filing a notice of appeal with WCAT. A notice of appeal must [s. 292(2)]:

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

If the notice of appeal is deficient, WCAT will allow a reasonable time for it to be corrected [s. 292(3)]. If the appellant does not correct the deficiencies within the time allowed, WCAT will close the appeal as incomplete and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (s. 293(3), and 8.2 to 8.2.3).

5.1 Initiating an Appeal

5.1.1 Notice of Appeal Must Be in Writing

RULE: An appellant may initiate an appeal in any written form which provides the information required by section 292(2). This may be done by delivering, mailing or sending by facsimile transmission (fax) to WCAT a completed notice of appeal form, letter, or other document containing the required information in English. WCAT will treat receipt of a written notice to appeal by the Review Division or by any Board office as receipt by WCAT.

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

An appellant must meet the requirements of section 292(2) or WCAT will not consider an appeal to be initiated.

WCAT notice of appeal forms are accessible on the WCAT website at: www.wcat.bc.ca.

5.1.2 Telephone Notification of Intent to Appeal

RULE: Telephone notification is not sufficient to initiate an appeal. WCAT will accept telephone notice of intent to appeal for the purpose of meeting the 30- or 90-day time limit, provided that WCAT receives a written notification from the appellant which meets the requirements of section 292(2), within the time WCAT subsequently allows.

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

Where an appellant does not provide the required information by the date WCAT subsequently allows, WCAT will treat the appeal as incomplete and as not initiated within the time limit to appeal. WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 293(3) and 8.2 to 8.2.3).

5.1.3 Incomplete Notice of Appeal

RULE: Where the notice of appeal, letter or other written method of initiating the appeal does not meet the requirements of section 292(2), the appellant must provide a complete notice of appeal within the time WCAT subsequently allows (normally 21 days), or the time limit to appeal, whichever is greater.

Where an appellant does not provide the required information by the date WCAT subsequently allows, WCAT will treat the appeal as incomplete and as not initiated within the time limit to appeal. WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 293(3) and 8.2 to 8.2.3).

5.1.3.1 Withdrawal of Incomplete Appeal

RULE: An appellant may withdraw an incomplete appeal at any time. WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to appeal (see s. 293(3) and 8.2 to 8.2.3 and 8.5).

An incomplete appeal is an appeal that has not met the requirements of section 292(2).

5.1.4 Decision or Order Appealed

RULE: To meet the requirements of section 292(2)(c), it is sufficient for the appellant to provide a brief explanation as to why the decision or order appealed is incorrect or should be changed.

5.1.5 Outcome Requested

RULE: To meet the requirements of section 292(2)(d), it is sufficient for the appellant to provide a brief statement of the outcome requested. The appellant should relate the requested outcome, that is, the remedy, to the issues raised by the decision or order appealed. WCAT generally lacks jurisdiction to award remedies or outcomes with respect to matters not addressed in the decision or order appealed (3.3).

5.1.6 Procedure – Constitutional Issues and *Human Rights Code*

5.1.6.1 Who May Raise Constitutional Issues

Any party to an appeal can raise a constitutional issue. A WCAT panel may also raise a constitutional issue on its own initiative. A party or WCAT may raise a constitutional issue on appeal to WCAT, regardless of whether the issue was raised at the Review Division.

5.1.6.2 When to Raise Constitutional or *Human Rights Code* Issues

Rule: A party who intends to raise a constitutional issue and/or to ask WCAT to apply the *Human Rights Code* must state their intention to do so and describe the constitutional issue and/or application of the *Human Rights Code* as soon as it is reasonably practicable to do so. Failure to comply with this rule may result in WCAT refusing to address the constitutional issue and/or apply the *Human Rights Code*.

5.1.6.3 Order of Consideration of Issues

In general, WCAT will not address constitutional issues or apply the *Human Rights Code* unless the panel assigned to the appeal determines it is necessary to do so in order to decide the appeal. A panel may consider and decide issues other than constitutional or issues requiring application of the *Human Rights Code* first. WCAT may decline to consider a constitutional issue or apply the *Human Rights Code* where the panel determines that the appeal can be properly decided without doing so.

Where a panel indicates that it will consider issues other than constitutional issues before considering a constitutional issue, the party raising the constitutional question or seeking the constitutional remedy may postpone compliance with section 8 of the Constitutional Questions Act (CQA) until the panel has determined whether consideration of the constitutional issue is required [see item 5.1.6.4 Compliance with Constitutional Questions Act].

If, after considering issues other than constitutional issues or issues requiring the application of the *Human Rights Code*, a panel determines that it is necessary to consider the constitutional and/or *Human Rights Code* issues, the parties will be given an opportunity to make submissions on those issues.

5.1.6.4 Compliance with the *Constitutional Questions Act*

The *Constitutional Question Act*, R.S.B.C., 1996, c. 68 (CQA) requires notice where the constitutional validity or applicability of any law (including a regulation) is challenged, or where an application is made under section 24(1) of the *Charter*. Notice is not required where the remedy consists of the exclusion of evidence.

Practice Directive: A party to an appeal, who seeks to challenge the constitutional validity or applicability of a provision of the Act, regulations, or policy, or obtain a constitutional remedy as defined by the CQA, must comply with the section 8 of the CQA. In particular, the party raising the constitutional issue or seeking the constitutional remedy must prepare and serve notice on the Attorney General of Canada and the Attorney General of British Columbia in accordance with section 8 of the CQA. Additionally, the party raising the constitutional question must promptly provide to WCAT a copy of the notice together with proof of service on the Attorney General of Canada and the Attorney General of British Columbia.

WCAT determines whether the notice complies with section 8 of the CQA. If the party fails to comply with section 8 of the CQA, the WCAT panel may:

- (a) Decline to consider the constitutional issue or provide a constitutional remedy;*
- (b) Adjourn a hearing to give the party time to comply with section 8 of the CQA; or*
- (c) Comply with section 8 of the CQA on its own initiative.*

In considering whether to exercise its discretion to give the required notice, WCAT will consider whether the party seeking to raise the constitutional question has, when indicating their intention to raise a constitutional question:

- (a) Identified the specific provision of the WCA, regulations or policy they intend to challenge, or the Charter remedy they seek;*
- (b) Identified the specific constitutional provision(s) they intend to rely on;*
- (c) Identified any specific Charter right or freedom alleged to have been infringed or denied;*
- (d) Given particulars necessary to show the point to argued on appeal; and*
- (e) Explained why they are unable to provide the notice required by section 8 of the CQA.*

WCAT will not normally exercise its discretion to provide notice in the absence of the above information.

If the party seeking to raise a constitutional question does not provide the notice required by the CQA, and WCAT does not exercise its discretion to do so, the constitutional question that the party identified will not be considered.

5.1.6.5 Disclosure to Attorneys General and Submission Process

Where the panel determines that it is necessary to consider a constitutional question, and if, following notice, the Attorney General of Canada or the Attorney General of British Columbia becomes a party to the appeal:

- (a) WCAT will order disclosure of the Board's records relevant to the matter under appeal to be made to the Attorney General or Attorneys General, as the case may be. WCAT will also provide to the Attorney General or the Attorneys General, relevant information from the appeal, including but not limited to submissions made by the party or parties concerning the constitutional question;
- (b) The Attorney General or Attorneys General will have 28 days from the date of disclosure to provide submissions with respect to the constitutional question;
- (c) WCAT will disclose any submission received from either Attorney General to the other parties, who will have 21 days to provide a submission on the constitutional question in response;
- (d) WCAT will disclose any submission received in response to an Attorney General's submission to the other parties, for information purposes only, except that the Attorney(s) will have 14 days to provide a rebuttal submission with respect to the application of section 1 of the Charter;
- (e) WCAT will disclose any rebuttal submission received from the Attorney(s) General to the other parties, for information only.

5.2 Authorizations

5.2.1 For Representatives to Act (6.3.1)

RULE: Appellants or their representatives may initiate an appeal. The WCAT notice of appeal form includes authorization for the representative to act. (6.3.1)

The WCAT authorization of representative form is accessible on the WCAT website at: www.wcat.bc.ca.

5.2.2 For WCAT to Obtain Evidence (9.3 to 9.3.3)

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

5.3 Service and Delivery of Documents

Section 344 sets out the principles that WCAT must apply with respect to the service and delivery of documents:

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

Although WCAT may serve documents by fax or electronic transmission, WCAT will normally do so only when a party requests [s. 344(1)(c)].

Where a document is transmitted by fax, the page or printout of the electronic record the fax machine produces that identifies the document, shows the number dialled and that the fax was successfully sent, will normally be proof of delivery or service.

Where a document is transmitted electronically other than by fax, a printout of an electronic acknowledgement of the transmission that identifies the document and intended recipient will normally be proof of delivery or service.

If a decision is served or sent by personal service, or by electronic transmission, the time period runs from the date of service and the eight days for mailing does not apply. The presumption of service in sections 344(2) and (3) does not apply if the party receives the document late because they were absent, in an accident, ill or for another cause beyond their control, so long as they act in good faith [s. 344(4)].

Proceedings are not invalidated due to irregular service if the party to be served knew about the content of the document within the time allowed for service, the party consents, or they are not prejudiced, or the prejudice can be cured by other means [s. 344(5)]. Where service under section 344(1) is impractical, WCAT may notify parties of a hearing by public advertisement or other means [s. 344(6)].

If the last day for filing an appeal or document falls on a weekend or public holiday, the time for filing is extended to the first business day when WCAT's offices are open [s. 25, *Interpretation Act*, R.S.B.C. 1996, c. 238].

5.3.1 Change of Address

RULE: Parties must inform the Board and WCAT of any change of address. Where a party fails to do so, evidence that they did not receive a document because it was

mailed to their prior address will not rebut the presumption of service under section 344(2) (14.2 to 14.2.3.4 and 13.1 to 13.1.4).

The WCAT change of address form is accessible on the WCAT website at: www.wcat.bc.ca.

5.3.2 Returned Mail

Practice Directive

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

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

- a) If the matter has been scheduled for an oral hearing, the oral hearing will be cancelled; and,*
- b) WCAT will send a final notice to the appellant's last known address advising that, in the absence of a response within 21 days, WCAT may dismiss the appeal [s. 31(1)(e) ATA].*

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

6 REGISTRATION OF APPEALS

6.1 Registration

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

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

6.2 Acknowledging Receipt

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

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

6.3 Representatives

Section 32 of the ATA allows a party to be represented by counsel or an agent. "Lay" representatives are not considered in breach of the *Legal Profession Act*, S.B.C. 1998, c.9, when acting on behalf of a person on a WCAT matter [s. 354 WCA].

6.3.1 Representative Authorizations

The Rule and Practice Directive in this section are intended to protect the confidentiality of personal information as required by sections 235, 349 and 314 of the WCA. The Rule and Practice Directive do not apply to the workers' and employers' advisers and their staff (see section 94).

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

If the appeal is initiated by a representative, the representative must provide the appellant's signed authorization for the representative to act unless there is an authorization on the Board file that is less than two years old and has not been revoked. If more than two years has elapsed since the party authorized the representative but the authorization has not been revoked, or the appellant's authorization for the representative to act is in a Request For Review or Notice of Participation filed with the Review Division of the Board in relation to the decision being appealed, and:

- a) the representative continued to represent the party at the Review Division with respect to the decision being appealed, and received a copy of the Review Division decision;
- b) the representative continues to represent the party in a post-decision application before WCAT, a judicial review, or the continuation of an appeal following reconsideration or judicial review; or,
- c) the two years expires during the course of an appeal, including the continuation of an appeal following reconsideration or judicial review,

the representative may be considered authorized until the end of the appeal, post-decision matter before WCAT, judicial review proceeding, or continuation of the appeal following reconsideration or judicial review unless the party advises otherwise.

Practice Directive

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

WCAT may require a current authorization if significantly longer than two years has elapsed since the party authorized the representative to act.

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

The WCAT authorization of representative form is accessible on the WCAT website at: www.wcat.bc.ca.

6.4 Board Notification

As soon as practicable, WCAT must notify the Board of an appeal [s. 295(2)]. The registrar's office will notify the Board of the appeal once it has determined that there is a valid appeal and has identified any participating respondents. The Board must, as soon as practicable, provide WCAT and the participating parties with a copy of its records respecting the matter under appeal [s. 295(3)].

The appellant will be deemed to have requested disclosure or updated disclosure at the time the appellant files a notice of appeal. If a respondent indicates that they wish to participate in the appeal, the Board will provide them with disclosure or updated disclosure (6.5.1). Disclosure for the purpose of complying with the requirements of procedural fairness is authorized under section 314(1) as being necessary to the discharge of WCAT's obligations under Part 7 [see 1.5.3.1].

WCAT's 180-day time frame for issuing its decision starts once WCAT receives the Board's records [s. 306(4)] (17.1 to 17.1.2).

6.5 Notification of Respondents (4.8)

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

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

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

6.5.1 Participating Respondents

Participating respondents are entitled to (1.5.3.1):

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

6.5.2 Non-Participating Respondents

If the respondent does not submit a notice of participation, WCAT will provide no further information or notices concerning the appeal, apart from a copy of the final decision. However, where the panel is considering a new determination issued by the Board following a referral back under section 297(3), WCAT will notify a non-participating respondent of the new determination and invite their participation (8.4.1).

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

6.5.3 Unregistered Employer Charged with Claims Costs (Section 263)

There is no respondent on an employer's appeal concerning the charging of claim costs under section 263 due to lack of registration at the time of a worker's injury or disease.

6.5.4 Certificate Appeals (Sections 55, 58 and 59)

There is no respondent on an appeal concerning an order under section 96 to cancel or suspend a certificate under the OHS provisions of an occupational first aid attendant or instructor [s. 55], a medical certificate of a worker's fitness for a specific type of work such as diving [s. 58, s. 24.10 of the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97], or a certificate of a blaster or blasting instructor [s. 59].

6.6 Participating Person/Representative Group

Section 297(2)(g) provides that WCAT may request any person or representative group to participate in an appeal if WCAT considers that this participation will assist WCAT to fully consider the merits of the appeal.

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

6.6.1 In Assessment Appeals

Where an assessment appeal concerns whether a putative employer is liable for assessments for its "workers," or whether the alleged workers are independent operators, WCAT may invite the workers/independent operators to participate.

6.6.2 In Employer Relief of Costs Appeals (Section 240(1)(d))

Where an employer's appeal concerns relief of claim costs under section 240(1)(d) on the basis of a worker's pre-existing disease, condition or disability, WCAT will invite the worker to participate as the worker's evidence of their prior medical and employment history may be relevant.

6.6.3 In Employer Cost Transfer Appeals (Section 249)

Where an employer's appeal concerns claims cost transfer from one employer to another under section 249, WCAT will invite the injured worker to participate as the worker may have relevant information to provide.

6.6.4 In Administrative Penalty Appeals (Section 95)

Where an appeal concerns an administrative penalty under section 95, WCAT will invite the employer's joint health and safety committee or worker health and safety representative, and the worker representative indicated on the initiating inspection report (if any), to participate as they may have relevant information to provide.

6.6.5 In Certificate Appeals (Sections 55, 58 and 59)

Where an appeal concerns an order under section 96 to cancel or suspend a certificate under the OHS provisions of an occupational first aid attendant or instructor [s. 55], a medical certificate of a worker's fitness for a specific type of work such as diving [s. 58, s. 24.10 of the *Occupational Health and Safety Regulation*], or a certificate of a blaster or blasting instructor [s. 59], WCAT may invite the employer to participate. WCAT will determine the extent of participation.

6.6.6 Other

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

6.6.7 Participation by the Board

As decision-maker, the Board is not a party to tribunal proceedings. The Board does not have standing to participate in an appeal except by WCAT's invitation. In certain appeals (primarily those involving prevention or assessment matters), WCAT may invite the Board to participate in an appeal under the general authority to request participation by "any person" [s. 297(2)(g)].

WCAT will determine the extent of the Board's participation in an appeal, and in making that determination WCAT may consider the submissions of the parties.

In appeals where the Board is invited to participate, the Board's general role will be to provide the panel with information within the knowledge and expertise of the Board, rather than to participate actively as a party. From time to time a Board legal officer may accompany a Board officer invited to attend an appeal hearing, in which case the panel may permit the Board officer and Board legal officer to listen to the testimony of the witnesses. The panel may then permit the Board legal officer to question the Board officer, in the manner of a direct examination, in order to elicit from the Board officer information respecting factual matters referred to by other witnesses, or other factual matters relevant to the issue or issues in the appeal. Regardless of whether the Board officer testifies in the manner of a direct examination, the panel may permit the parties to the appeal to cross-examine the Board officer.

Although subsection 297(2)(g) provides that WCAT may request any person or representative group to participate in an appeal if the tribunal considers that this participation will assist the tribunal to fully consider the merits of the appeal, WCAT will not generally require a Board decision-maker to participate in an appeal with respect to one of their decisions. An expert who provided an opinion on a Board file may be required to give evidence. Section 299(5) prohibits WCAT from compelling the Board to give evidence respecting the development or adoption of the policies of the board of directors.

6.7 Posting a Notice in Occupational Health and Safety Appeals

Where a party appeals an occupational health or safety matter under Part 3, WCAT may order a participating employer (whether the appellant or the respondent) to post a notice to bring the appeal to the attention of its employees [s. 297(2)(f)].

The employer must post the information at or near the workplace in one or more conspicuous place(s) where it is most likely to come to the attention of the workers, or otherwise bring it to their attention. If reasonably practicable, at least one place of posting must be at or near the equipment or work area to which it relates [s. 51]. The employer must provide a copy of the posted notice to WCAT.

The employer is not required to post a notice of appeal concerning a prohibited action matter under section 50, or concerning an order under section 96 to cancel or suspend a certificate under Part 3 (i.e. of an occupational first aid attendant or instructor [s. 55], a medical certificate of a worker's fitness for a specific type of work such as diving [s. 58, s. 24.10 of the *Occupational Health and Safety Regulation*], or a certificate of a blaster or blasting instructor [s. 59].

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

7 PRELIMINARY PROCESSES

7.1 Streaming: Regular or Specialty

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

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

In the specialty stream, the appeal will be assigned to a panel at the outset, and the panel will determine whether the appeal should be by written submissions or oral hearing. Prevention appeals, including prohibited action appeals under section 50, and assessment appeals will normally be assigned to the specialty stream. The registrar's office will assign other appeals to the specialty stream based on procedural complexity.

7.2 Joining or Combining Appeals

The chair may order that related matters be considered together in one hearing [s. 280(2)(k)].

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

7.2.1 Joining Appeals Regarding the Same Worker

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

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

7.2.2 Combining Appeals

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

WCAT may require each party to sign an authorization to release information to the other parties in the appeal. WCAT may also require each party to sign an agreement with respect to placing documentation pertaining to the appeal on the Board files of all the parties (see Appendix 6).

Depending on the circumstances, the panel may issue:

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

7.3 Facilitated Settlement and Alternative Dispute Resolution (ADR)

The chair may appoint a member or staff of the tribunal or another person to conduct a facilitated settlement process to resolve one or more issues in dispute. WCAT may require two or more parties to participate in the facilitated settlement process, in accordance with the MRPP. WCAT may make the consent of one, all or none of the parties a condition of a facilitated settlement process [s. 28 ATA].

The chair may establish any rules, forms, practices and procedures required for the efficient and cost effective conduct of appeals to WCAT, including employing voluntary ADR processes [s. 280(2)(d)(iii) WCA; s. 28(1) ATA].

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

7.3.1 Mediation

WCAT has limited the use of mediation to prohibited action appeals under section 289(1) and appeals from classification decisions under section 244(2). It is unlikely that WCAT will utilize mediation to address compensation entitlement issues.

WCAT may recommend to the parties to the appeal that mediation be used to assist in the resolution of an appeal [s. 297(2)(e)]. The purpose of mediation is to seek a consensual resolution to a dispute, and/or to some of the issues or matters in dispute, between or among the parties to an appeal. Where WCAT considers it appropriate, representatives from the Board may also be involved in the mediation process.

The representatives of parties participating in mediation must have the authority to enter into a settlement agreement. If mediation is undertaken but does not result in a consensual resolution, WCAT will proceed to adjudicate the appeal. Unless the parties otherwise agree, evidence, notes or records from a mediation process which does not produce a consensual resolution will be destroyed and will not be placed on the WCAT

file. They are inadmissible in the appeal proceedings [s. 298(5)]. The appeal will be assigned to a WCAT panel which did not have any involvement in the mediation.

Where the parties achieve a consensual resolution, the parties' representatives will draft a settlement agreement. The mediator may assist in preparing the settlement agreement. Generally, the settlement agreement will not refer to the appellant withdrawing the appeal.

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

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

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

7.4 Pre-Hearing Conferences

WCAT may require the parties to attend or participate in a pre-hearing conference to discuss procedural and substantive issues relating to the conduct of an appeal [s. 297(2)(c)]. The panel will decide whether a pre-hearing conference should be held. A pre-hearing conference may assist the panel to:

- a) identify the issues;
- b) determine what additional evidence, including any new medical or other expert evidence, will be required, and the time frame for the production of that evidence;
- c) resolve any procedural issues such as whether an oral hearing will be convened and, if so, when and for how long the hearing would be scheduled;
- d) determine whether an issue should be referred for mediation;
- e) consider whether the panel should seek advice from a health professional under section 302; or,
- f) identify and resolve disclosure issues.

Pre-hearing conferences will be recorded.

7.5 Appeal Method

WCAT may conduct an appeal in the manner it considers necessary, that is by oral hearing or written submissions. Oral hearings may be conducted in person, by teleconference, videoconference, or any other electronic means [s. 297(1)].

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

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

WCAT will normally conduct applications for an extension of time to appeal (8.2), a stay of decision (8.3), a certification to court (1817), and a reconsideration (20.2 to 20.3.2) by written submissions.

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

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

8 SUMMARY DECISIONS

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

Summary decisions may be provided by a formal numbered decision or by letter. They may be issued by the registrar's office or by a panel. They may concern:

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

8.1 Dismissing Appeals

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

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

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

8.2 Extending the Time to Appeal

There is a 30-day time limit for appealing a decision of a review officer to WCAT [s. 293(1)]. There is a 90-day time limit for appealing a decision of a Board officer concerning a prohibited action complaint (under section 50) or concerning a reopening on application (under section 125(1)) to WCAT [s. 293(2)] (5.1). WCAT adds eight days to the time to allow for mailing [s. 344(2)].

The chair has the discretion to extend the time to appeal under section 293(3). In order for the chair to exercise that discretion in favour of extending the time to appeal, an applicant must meet, at a minimum, the following two requirements:

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

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

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

Practice Directive

8.2.1 Application for Extension of Time

WCAT will not process an application for an extension of time to appeal where the notice of appeal, letter or other written method of initiating the appeal, does not meet the requirements of section 292(2).

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

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

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

8.2.2 Special Circumstances Precluded

Special circumstances must preclude filing the appeal on time. The dictionary definition of “special” includes “unusual,” “uncommon,” “exceptional,” and “extraordinary.” In the context of section 293(3)(a), “preclude” does not mean “absolutely prevent.” It may include “prevent,” “hinder,” “impede,” or “delay.” When deciding an extension of time application, panels will not consider the merits of the appeal.

The special circumstances test in section 293(3)(a) is only applicable to the failure to file the appeal on time. It does not apply to any subsequent delay after the time to appeal expired.

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

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

8.2.2.1 Representative Acts or Omissions

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

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

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

8.2.3 Injustice

In order to extend the time to appeal, an injustice must result from the refusal to grant the extension (s. 293(3)(b)). “Injustice” is given a wide meaning, including “unfairness,” “lack of justice,” or “wrong.” In determining whether “an injustice would otherwise result,” the chair may consider a number of factors, including:

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

- d) *whether the applicant acted promptly to initiate an appeal when they became aware of the decision, the time limit for appealing, or the significant new evidence that would support the appeal; and,*
- e) *any other relevant circumstances particular to the appeal.*

The WCAT extension of time to appeal application form is accessible on the WCAT website at: www.wcat.bc.ca.

8.3 Stay of Decision under Section 294

Unless WCAT orders otherwise, an appeal to WCAT does not operate as a stay, or affect the operation, of the decision or order under appeal [s. 294].

RULE: A stay is an extraordinary remedy. WCAT will not process a stay application unless the applicant has completed a notice of appeal within the time limit to appeal which meets the requirements of s. 292(2)

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

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

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

8.3.1 Application for Stay of Decision

Practice Directive

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

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

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

The WCAT application for a stay form is accessible on the WCAT website at: www.wcat.bc.ca.

8.4 Suspension of an Appeal

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

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

See 3.4.1 with respect to suspension under s. 45(4) ATA.

8.4.1 Suspension for Referral of an Undetermined Matter Back to the Board under Section 297(3)

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

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

If a panel refers a matter back to the Board under section 297(3), the panel must take the Board's determination into account in deciding the original appeal. The parties may not request a review of that determination by a review officer [s. 297(4)]. The panel has jurisdiction to deal with the whole matter, including the issues arising from the Board's new determination. The panel must make a decision (that is, confirm, vary or cancel) both on the matter which was the subject of the original appeal, as well as on the new Board determination that resulted from the referral.

When WCAT receives the Board's determination requested under section 297(3), WCAT will reactivate the suspended appeal. WCAT will notify a non-participating respondent of the Board's new determination and will provide the parties with the opportunity to make submissions. If the Board's determination is with respect to another claim, any new respondent will also be invited to participate. If the Board makes other new decisions which result from the referral but do not directly address the matter referred, they are reviewable by a review officer.

8.4.2 Suspension to Obtain Independent Health Professional Advice under Section 302

When a panel decides to retain an independent health professional to provide advice in respect of a specific appeal under section 302, WCAT will suspend the appeal when the panel provides the registrar's office with the completed terms of reference for the health professional. WCAT will reactivate the suspended appeal when it receives the health professional's report [s. 302(7)] (see 11).

8.4.3 Suspension for Referral to the Chair for Lawfulness of Policy under Section 304

If a panel considers that a policy of the board of directors should not be applied on the ground that the policy is so patently unreasonable that it is not capable of being supported by the WCA and its regulations [s. 304(1)], the panel must refer that issue to the chair. WCAT must suspend the appeal until the chair or the board of directors, as the case may be, makes a determination. If the chair refers the issue to the board of directors, the chair must also suspend any other pending appeals that the chair considers to be affected by the same policy until the board of directors makes a determination [s. 304(5)(b)] (see 9).

8.4.4 Suspension Pending a Board Decision on a Related Matter under Section 305

On the appellant's application, or on the chair's own initiative, WCAT may suspend an appeal if a Board's decision respecting a related matter is pending [s. 305(1)], either before the Board or before a review officer.

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

Practice Directive

An appeal may be suspended under section 305(1) at any time during the appeal proceedings.

If WCAT is considering suspending an appeal under section 305(1) on its own initiative, WCAT may seek further submissions from the parties. Prior to suspending the appeal, WCAT should be satisfied that:

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

Once WCAT suspends an appeal under section 305(1), WCAT will notify all participating parties and clearly identify the pending decision of the Board or review officer. When an

appeal is suspended, a deferral of compensation payable due to a review officer's decision continues.

At any time before the Board or review officer issues the pending decision, the appellant may ask WCAT to continue the appeal. WCAT may grant the request or may continue the suspension [s. 305(3)]. WCAT cannot continue the appeal on its own initiative or at the request of the respondent.

When the Board or review officer, as the case may be, issues their decision on the related matter, the appellant has 30 days after the date of the decision to ask WCAT to proceed with the suspended appeal [s. 305(2)]. WCAT must then reactivate and continue the appeal. If the appellant does not ask WCAT to proceed with the suspended appeal within 30 days, WCAT will close the appeal and take no further action. If the appellant later wishes to pursue the appeal, they must apply for an extension of time to continue the appeal [s. 305(4) and 8.2 to 8.2.3].

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

8.5 Withdrawals

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

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

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

This rule applies to appeals that have met the requirements of section 292 (see Rule 5.1.3.1 with respect to withdrawal of appeals that have not met the requirements of section 292). Withdrawing an appeal does not extend the time limit for filing the appeal. An appellant who withdraws an appeal before the appeal has been assigned to a panel, and who later wishes to pursue the appeal must apply for an extension of time to appeal (see section 293(3)).

In deciding whether to accept a request for withdrawal after assignment of the appeal to a panel, the panel may consider whether there is evidence of:

- a) fraud or misrepresentation on the part of the appellant;
- b) an error of law or policy within the scope of the appeal which resulted in the appellant being entitled to benefits they would not be entitled to but for the error;
or
- c) any other circumstance that could result in an injustice.

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

WCAT's decision to accept the withdrawal of an appeal that has met the requirements of section 292(2) is final and conclusive. If the appellant later wishes to pursue the appeal, they must apply for reconsideration of the withdrawal decision (20.2 to 20.3.2).

9 NATURE OF WCAT PROCEEDINGS

9.1 General Principles

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

WCAT has full substitutional authority. A WCAT panel can reweigh the evidence and substitute its decision for the decision below. This authority is found in the statutory discretion to confirm, vary or cancel the appealed decision or order [s. 306(1)].

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

In the hybrid rehearing model at WCAT, the Board's file is provided to the parties and to WCAT [s. 295(3)]. Thus, the documents in the file become evidence on the appeal without needing further proof as would be required in a court proceeding. While the documents become evidence, how much weight is given to the matters described in the documents is for the WCAT panel to decide. The parties may also provide new evidence to WCAT that did not exist at the time the matter was before previous decision makers and make new arguments.

WCAT is not limited by the evidence in the Board's file and the evidence provided by the parties. If WCAT is not satisfied with the sufficiency and/or reliability of the evidence presented, WCAT has the authority to inquire into the matter under appeal and consider all information obtained [s. 297(2)(a)]. While WCAT has inquiry power, and the discretion to seek further evidence, it is not obliged to do so. The question as to whether the evidence is sufficiently complete and reliable to arrive at a sound conclusion with confidence is one which rests with the panel. It is not WCAT's responsibility to evaluate the appeal and then notify parties of the weaknesses in the case for the purpose of obtaining further evidence.

WCAT's inquiry power includes asking searching questions of the parties and the witnesses at oral hearings, asking the Board to investigate further into a matter and report back, and inviting another person or representative group to participate in an appeal if their participation will help WCAT to fully consider the merits of the appeal [s. 297(2)(b) and (g)].

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

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

Parties should be mindful of the limitations of reconsideration based on new evidence in section 310. New evidence must be substantial and material and must not have existed at the time of the appeal hearing or did exist but was not discovered and could not have been discovered through the exercise of reasonable diligence (20.2.1).

9.2 Panels' Authority

WCAT panels have the general authority to determine how to conduct the appeal and whether and how to seek additional evidence. A panel may request independent assistance or advice from a health professional under section 302. A panel may exercise its inquiry powers under sections 297 and 299. The question as to whether such inquiry powers should be exercised is a matter to be determined by the panel.

Specifically, panels have the authority to consider:

1. How the appeal will be conducted, including:
 - a) who should participate [s. 297(2)(g)] (6.6 to 6.6.7);
 - b) whether to deem the employers' adviser or an organized group of employers to be the employer [s. 300] (4.7.3 to 4.7.3.1);
 - c) whether to convene a pre-hearing conference [s. 297(2)(c)] (7.4);
 - d) whether to require pre-hearing disclosure of evidence [s. 297(2)(d)] (7.4);
 - e) whether the appeal should proceed by written submissions or oral hearing, and whether the oral hearing should be conducted by teleconference, videoconference, or other electronic means [s. 297(1)] (7.5);
 - f) the requirements for any oral hearing (date, location, duration, interpreter);
 - g) any other preliminary matters which would normally be addressed by the registrar's office.

2. Whether to obtain additional evidence and by what means:
 - a) whether to request independent medical assistance or advice from a health professional under section 302 and, if so, what findings of non-medical fact are required (see 11);
 - b) whether other evidence should be requested [s. 297(2)(a), s. 299] (9.3.2 to 9.3.3 and 11.7 to 11.8);
 - c) whether the Board should be requested to investigate a matter further and report in writing to WCAT [s. 297(2)(b)] (9.3.1);

- d) whether there should be a pre-hearing examination of a party on oath or affirmation or by affidavit [s. 297(2)(d)].
3. Whether additional decisions or determinations are necessary:
- a) whether an appeal should be suspended while a matter that should have been determined is referred back to the Board for determination [s. 297(3)] (8.4.1);
 - b) whether an appeal should be suspended pending the Board's decision on a related matter [s. 305] (8.4.4).

9.3 Panel Inquiries

9.3.1 Investigation by the Board under Section 297(2)(b)

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

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

9.3.2 Other Panel Inquiries under Section 297(2)(a)

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

9.3.3 Panel Site Visit

Rule: Where the panel concludes that a site visit is necessary, participating parties and their representatives must be invited to attend.

The panel may receive comments and submissions from the parties during the site visit, or may convene or reconvene an oral hearing for submissions on the relevance or significance of the matters observed during the site visit. Generally, no voice recording will be made of the site visit or of any comments or submissions the parties make during the site visit.

The purpose of the site visit should be to appreciate the evidence and not to gather evidence. If the purpose of a site visit would be to gather, the panel should ask the Board to obtain the evidence through further investigation (see item 9.3.1).

9.4 Statutory Provisions affecting WCAT Deliberations

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

9.4.1 Merits and Justice

The panel may consider all questions of fact and law arising in the appeal [s. 303(1)].

A panel must make its decision based on the merits and justice of the case, but in so doing must apply a policy of the board of directors that is applicable in that appeal [s. 303(2)]. If the panel is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the panel must resolve that issue in a manner that favours the worker [s. 303(5)].

9.4.2 Application of Policy

Under section 319, the board of directors sets and revises policies respecting compensation, assessment, rehabilitation and occupational health and safety.

Section 303(2) states that a panel must apply a policy of the board of directors that is applicable. It is for the panel to determine if the policy is applicable in that appeal. A panel may refuse to apply a policy of the board of directors only if the policy is so patently unreasonable that it is not capable of being supported by the WCA and its regulations [s. 304(1)]. In that event, the panel must refer the policy to the chair of WCAT (see 9).

Panels may ask the Board to advise of a policy of the board of directors that is applicable to the matter under appeal [s. 295(4)]. A request of this nature will be sent to the Policy and Research Division of the Board. WCAT must advise the parties of the Board's response [s. 295(5)].

9.4.3 Legal Precedent Not Binding

The panel is not bound by legal precedent such as prior WCAT decisions on similar issues unless provided by a precedent panel under section 285(6) [s. 303(1)] (2.7.2). WCAT is bound by previous final decisions on the specific claim that is the subject of appeal. This includes decisions of Board officers, the Review Division, WCAT, former appeal bodies, and the courts.

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

9.4.4 Except Precedent Panel Decisions

The panel is bound by a prior precedent panel decision (under section 285(6)) unless the specific circumstances of the matter under appeal are clearly distinguishable from the circumstances addressed in the precedent panel's decision or, subsequent to the precedent panel's decision, a policy of the board of directors relied upon in the panel's decision was repealed, replaced or revised, or the prior decision has been overruled under section 303(4) [s. 303(3)] (2.7.2).

WCAT precedent panel decisions are accessible on the WCAT website at: www.wcat.bc.ca.

10 SECTION 304 REFERRAL TO THE CHAIR FOR LAWFULNESS OF POLICY

Section 304 states that WCAT may refuse to apply an applicable policy of the board of directors only if the policy is so patently unreasonable that it is not capable of being supported by the WCA and its regulations.

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

If a panel considers that an applicable policy of the board of directors should not be applied, that issue must be referred to the chair and the particular appeal must be suspended until the chair or the board of directors decides whether the policy should be applied [s. 304(2)].

As soon as practicable after the referral, the chair will decide whether the policy should be applied [s. 304(3)]. If the chair decides that the policy should be applied, the chair will refer the matter back to the panel and the panel is bound by the chair's determination [s. 204(4)]. If the chair decides that the policy should not be applied, the chair will [s. 304(5)]:

- a) send a notice of this determination, including the chair's written reasons, to the board of directors, and
- b) suspend any other appeal proceedings that are pending before the appeal tribunal and that the chair considers to be affected by the same policy until the board of directors makes a determination under section 304(6).

Where the chair believes there may be a reasonable apprehension of bias, the chair's authority under sections 304(3),(4), and(5) may be delegated to a vice chair or to a panel for the purposes of a specific appeal. The chair cannot make a general delegation of the chair's authority under sections 304(3), (4), and (5) [s. 304(9)].

10.1 Referral Process

Practice Directive

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

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

- b) *the panel's decision will be forwarded to the chair to determine the appeal method that will be followed. Generally, the referral will be considered by written submissions;*
- c) *the panel's decision will be disclosed to the parties for submissions; at the same time, as a courtesy, the panel's decision will be disclosed to the Board, specifically, to the chair of the board of directors, the Vice President, Policy, Investigation & Review, the Director of the Policy and Research Division, and the Chief Review Officer; the decision will also be posted to WCAT's website;*
- d) *if there is no respondent or the respondent is not participating, the chair may invite a workers' or employers' adviser to participate [s. 297(2)(g)];*
- e) *when submissions from the parties are complete, the chair may invite submissions from representative groups, including Workers' Advisers, Employers' Advisers, Workers' Compensation Advocacy Group, Business Council of B.C., Coalition of B.C. Businesses, Employers' Forum to the Board, and B.C. Federation of Labour [s. 297(2)(g)]. No unsolicited submissions from other individuals or groups will be accepted;*
- f) *the parties will be provided the opportunity to respond to any submissions received from representative groups;*
- g) *if the chair has determined that an oral hearing is necessary, the oral hearing will be scheduled and held. The parties and the representative groups who were invited to provide written submissions will be invited to the oral hearing;*
- h) *the chair will then decide whether the policy should or should not be applied. The chair will notify the parties, the board of directors, and the other representative groups who were invited to participate of that determination along with written reasons. The chair's decision will also be posted on WCAT's website;*
- i) *if the chair decides that a policy should be applied, WCAT will reactivate the suspended appeal and request submissions from the parties regarding the effect of the chair's decision on the appeal. When submissions are complete, the appeal will be returned to the panel for completion;*
- j) *if the chair decides that a policy should not be applied, the chair will make reasonable efforts to identify other appeals affected by the same policy. The following steps may be taken to identify other affected appeals:*
 - i) *sending a notice to all WCAT members, officers and staff of WCAT;*
 - ii) *conducting a computer search using the WCAT case management system of current appeals at WCAT;*
 - iii) *posting a notice on the WCAT website for 30 days;*

- k) the chair's decision, with written reasons, will be made accessible to the parties in all suspended appeal proceedings pending before WCAT which the chair considers to be affected by the same policy;*
- l) when WCAT sends the notice to the board of directors, a list of all suspended appeals, with names and addresses of the parties, will be provided to the board of directors. WCAT will provide a copy of the notice to the Board's Policy and Research Division and Legal Services Division at the same time;*
- m) within 90 days after notice from the chair, the board of directors must review the policy and determine whether WCAT may refuse to apply it [s. 304(6)]. The board of directors must provide the parties to the appeal, and the parties to any other suspended appeal affected by the same policy, with the opportunity to make written submissions on this review [s. 304(7)];*
- n) after the board of directors makes its determination, the board of directors must refer the matter back to WCAT and WCAT is bound by that determination. WCAT will reactivate the suspended appeals.*

11 EVIDENCE

11.1 Introduction

Unlike the courts, WCAT is not bound to follow strict rules of evidence. WCAT has the authority to conduct an appeal in the manner it considers necessary [s. 297(1)]. However, knowledge of the basic principles of evidence and the reasoning behind them assists panels in deciding what “weight” or importance to give to particular pieces of evidence.

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

11.2 Types of Evidence

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

While the rules of evidence do not strictly apply to WCAT, the principles that underlie those rules may be relied upon when determining what weight is to be given to evidence.

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

Direct evidence consists of firsthand accounts of events – a report by a witness about facts perceived by the witness with his or her own senses. Hearsay evidence is any recounting by a witness of a statement, made orally or in writing by another person, when the statement is presented to prove the truth of that statement. For example, witness A stated that witness B told witness A that B slipped and fell. While the statement by witness A may be accepted to establish that witness B *said* that B had slipped and fell (and would not be described as hearsay evidence for this purpose), the statement by A would be hearsay evidence if A’s statement was being used to establish that B *had* slipped and fallen. Courts generally do not accept hearsay evidence because of its potential to be inaccurate where the credibility of the source of the evidence cannot be tested. WCAT is not precluded from admitting hearsay evidence (11.5.1), although a panel will generally give hearsay evidence less weight than direct evidence. It is always preferable for the person who perceived the event directly to provide evidence to WCAT.

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

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

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

11.3 Relevance

WCAT may receive and accept evidence it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law [s. 298]. Evidence is relevant if it tends to establish the existence or non-existence of a fact in issue. Panels have no obligation to consider evidence that has no logical connection to the issue to be decided. All participants benefit from oral hearings that are controlled for relevance by allowing the maximum amount of time for addressing the essential elements of the appeal, and avoiding confusion with respect to the central issue(s).

11.4 Admissibility

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

There are also some statutory exceptions to this general principle on admissibility of evidence. Panels may exclude any information that is unduly repetitious [s. 298(2)]. Notes or records kept by a person appointed to conduct an alternative dispute resolution process are inadmissible [s. 298(5)], as is anything that would be inadmissible in court based on privilege under the law of evidence [s. 298(3)]. The general rule regarding admissibility is subject to the provisions of any other statute that expressly limits the extent to which or purpose for which any evidence may be admitted or used [s. 298(4)(4)]. Other such statutes include the ATA, the B.C. *Evidence Act*, R.S.B.C. 1996, c. 124, the *Canada Evidence Act*, R.S.C. 1985, c. C-5, and the *Apology Act*, S.B.C. 2006, c. 19.

11.4.1 Categories of Privilege

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

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

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

- a) the communication originated in a confidence that it would not be disclosed;
- b) this element of confidentiality is essential to the full and satisfactory maintenance of the relationship between the parties;
- c) the relationship is one which, in the opinion of the community, ought to be diligently fostered; and,
- d) the injury to the relationship resulting from the disclosure would be greater than the benefit to be gained related to the correct disposition of the appeal.

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

11.4.2 Evidence Received in Confidence

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

The rules of procedural fairness will almost always be paramount in WCAT proceedings. Thus, only in extraordinary circumstances, such as where the evidence is relevant to an ongoing law enforcement investigation, or where another statute expressly so allows, would a panel receive evidence in confidence.

11.5 Weight, Credibility and Reliability

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

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

11.5.1 Weight

The weight or importance which panels give to the evidence is largely a matter of common sense. Direct evidence is generally more reliable than indirect (hearsay or circumstantial) evidence. Hearsay evidence may be considered unreliable as its source is not available for questioning. For example, the evidence of someone who saw something happen is better than the evidence of someone who only heard about it from someone else.

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

be carefully examined for depth of reasoning, completeness and accuracy of medical observations and non-medical facts upon which the opinion is based, and the degree of the author's expertise.

11.5.1.1 Leading Questions

A leading question is a question that prompts or encourages the desired answer. The following are examples of leading questions:

- You slipped and fell on a pool of slippery grease, didn't you?
- And the next thing that happened was that you heard a pop in your lower back, correct?

In both examples, the question suggests the answer. Usually the answer to a leading question is a yes/no answer.

Questioners should avoid using leading questions in direct examination, because evidence given in that manner is less reliable and may be given less weight by the WCAT panel. Leading questions are acceptable where the evidence is not controversial, such as a witness' name and address.

11.5.2 Credibility

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

Credibility is concerned with the truthfulness of a person's testimony. However, credibility is not the same as reliability, which is concerned with the accuracy of a person's testimony. Thus, a credible witness may give unreliable testimony. The credibility of a witness will affect the weight given to that person's testimony. Panels must consider whether a witness' evidence is internally consistent, logical, and consistent with prior statements of that same witness. Panels should allow witnesses to comment upon earlier inconsistent statements. For example, where a worker's evidence at an oral hearing is inconsistent with statements attributed to the worker in the claim file, the panel should allow the worker to comment on the inconsistency.

11.5.3 Reliability

Reliability is concerned with the objective accuracy of a person's testimony. Panels must consider whether a witness' evidence is externally consistent with the other evidence, that is, consistent with the proven or undisputed facts in the case. This involves consideration of what is most reasonable and probable when the case is viewed as a whole.

In oral hearings, panels should allow witnesses to comment on externally inconsistent evidence. For example, where a worker's evidence regarding an injury is significantly or materially inconsistent with that of a supervisor, the panel should allow the worker and the supervisor to comment on the inconsistency where it is relevant to the matter before WCAT.

11.6 Expert Evidence

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

WCAT has made its own practice directive for the introduction of expert evidence and the testimony of experts [ss. 280 and 298 WCA, and s. 11 ATA]. Where there is a conflict between WCAT's practice directives and sections 10 or 11 of the *Evidence Act*, the WCAT practice directives apply. (See 16.1.3.1 for WCAT's practice regarding reimbursement of the expenses of expert reports. See 14.1.4 for deadlines regarding submitting expert opinions to WCAT.)

The following practice directive applies to expert evidence where an oral hearing is being held. The same principles apply generally to expert evidence where no oral hearing is being held. In particular, rules (a) to (d) apply to a matter being considered by written submissions, subject to WCAT's procedures regarding time frames for filing evidence and submissions and giving notice to other parties (13.1 to 13.1.2).

Practice Directive for Expert Evidence (see 16.1.3 to 16.1.3.2):

- a) *Expert opinion evidence will only be accepted from a person the panel finds to be qualified by education, training, or experience as an expert in the field or discipline in which they are giving their opinion. In giving evidence to the tribunal, an expert has a duty to assist the tribunal and is not to be an advocate for any party.*
- b) *The qualifications of the expert should be stated in writing with the expert's report. Such a statement of qualifications will generally be accepted as evidence of those qualifications. A job title (such as Board medical advisor, or vocational rehabilitation consultant) or professional designation will generally be accepted as evidence of the person's qualifications to hold the position described by the job title. However, it does not determine the level of expertise of that person in relation to specialized disciplines.*
- c) *Objections to a person's qualifications as an expert will not generally cause a panel to exclude that evidence, but may affect the weight given to the evidence.*
- d) *Written reports prepared by an expert are admissible without the need for the expert to attend an oral hearing. Generally, an expert's oral evidence may not be admissible in an oral hearing unless their written report was provided to WCAT at*

least 21 days prior to the hearing. The correspondence requesting the expert's written report must also be submitted.

(See 16.1.3.1 to 16.1.3.1.1 for provisions regarding reimbursement of the expense of obtaining expert evidence.)

- e) Where an oral hearing is held, the parties should provide written reports to WCAT promptly after receiving them so that they may be disclosed to all participants. WCAT must receive any expert's report at least 21 days prior to an oral hearing.*
- f) If a party does not provide an expert's report to WCAT 21 days before the hearing, the party must provide written or oral reasons why the expert's report was not submitted at least 21 days prior to an oral hearing. A party may also be asked to produce any supporting documentation.
 - i) An example of an acceptable reason for a late report might be that the representative requested a medical opinion many weeks before the oral hearing, and although the opinion is dated four weeks before the hearing, the expert did not provide it to the representative until the day before the hearing.*
 - ii) An example of an unacceptable reason might be that the representative had the report several weeks before the hearing, but due to late preparation, did not provide it to WCAT until the day before the hearing.**
- g) Panels have the discretion to receive a late expert's report at or before an oral hearing, in which case the panel will determine what steps are necessary to ensure the other participating party is given an adequate opportunity to respond. In deciding whether to receive the report, the panel will consider the reasons for the failure to submit the report at least 21 days in advance of the hearing. Where the other participating party would be prejudiced by not having had enough time to respond to the new expert evidence, the panel may:
 - i) allow time after the oral hearing for submission of a response;*
 - ii) postpone the oral hearing; or,*
 - iii) provide any other relief the panel considers appropriate.**
- h) WCAT may require an expert to attend an oral hearing if the panel believes the attendance is necessary for a fair hearing of the issues or failure to do so would prejudice a party to the proceeding.*

11.7 Orders (Subpoenas) for the Production of Existing Evidence and Attendance of Witnesses

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

Section 299(1) provides that, at any time before or during a hearing, WCAT may order a person:

- a) to attend an oral or electronic hearing to give admissible, relevant evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in an appeal, or
- b) to produce an admissible, relevant document or other thing in a person's possession or control.

Panels may issue an order under section 299(1) on their own initiative, or at the request of a party.

A written notice of oral hearing is an order to the appellant to appear at the time and place stipulated. [s.14(c) ATA] (Rule 14.2.3)

Practice Directive

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

Together with their request for an order under section 299(1), parties must provide WCAT with the following information in writing:

- a) *the name and address, and work location (if applicable) of the witness or person in possession of the documents or things;*
- b) *the exact documents or class of documents or things requested;*
- c) *the relevance of the evidence to the issue under appeal, that is*
 - i) *how it relates to the issue under appeal, and*
 - ii) *how it is necessary for WCAT to address the issue under appeal and make a decision in the appeal;*
- d) *whether the witness is willing to attend voluntarily, or the person is willing to produce the documents or things voluntarily and, if not, why not; and,*
- e) *whether there is another way of testing the evidence.*

If full and correct information is not provided, WCAT will generally not issue an order. Where an oral hearing is scheduled, the request for an order must be made at least 21 days in advance. Where there is no oral hearing, the request for an order must be made at least 21 days before the party's written submission is due. Otherwise, WCAT is under no obligation to consider the request in advance. The party may later repeat a request for an order to the panel.

In deciding whether to issue an order under section 299(1), WCAT will consider whether there are other means for obtaining the same evidence, the relevance of the evidence

and, if applicable, the reason for the unwillingness of the person to attend or provide evidence, voluntarily.

The panel will sign an order under section 299(1) in a form approved by WCAT (see Appendix 7 as modified from time to time). A person served with an order compelling their attendance at a hearing is entitled to conduct money payable at the time of service (Supreme Court Civil Rule 12-5(35)). A witness is not obligated to attend if the conduct money is not paid. A person served with an order compelling the production of documents is entitled to payment of the reasonable costs of copying and delivering the documents, payable in advance.

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

11.7.1 Depositions

WCAT may order depositions of witnesses (in or out of province) in accordance with the Supreme Court Civil Rules [s. 299(3)].

11.7.2 Non-Participating Party

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

11.7.3 Failure to Comply

If a person fails to comply with an order issued under section 299(1), WCAT may apply to the Supreme Court for an order directing compliance [s. 299(2)]. The panel may adjourn the hearing to allow for this. If a person summoned as a witness fails to attend a hearing, take an oath or affirmation, answer questions or produce the records or things in their possession, WCAT may apply to court for committal of that person for contempt [s. 49(1) ATA].

11.7.4 Freedom of Information and Protection of Privacy Act (FIPPA)

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

11.8 Production of Evidence by the Board

An officer, employee, or contractor of the Board may only be compelled to give evidence or produce books, papers, documents and things that [s. 299(4)]:

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

The minimum 21-day time frame for requesting orders set out in 11.7 also applies to requests for orders under section 299(4). Otherwise, WCAT is under no obligation to consider the request in advance. The party may later repeat the request to the panel.

A member of the board of directors or an officer, employee, or contractor of the Board may not be compelled to give evidence or produce books, papers, documents and things respecting the development or adoption of the policies of the board of directors [s. 299(5)]. This prohibition does not prevent voluntary production of these documents.

11.9 Documents in Languages other than English

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

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

12 INDEPENDENT MEDICAL ASSISTANCE OR ADVICE (IHP PROCESS)

12.1 General

If a panel determines that independent medical assistance or advice would assist in reaching a decision, the panel may seek that assistance or advice from one or more health professionals.

An employer, worker or a dependant of a deceased worker who is a party to an appeal may request in writing that WCAT retain a health professional to provide independent assistance or advice in the appeal [s. 302(1.2)]. If such a written request is made, the worker's medical condition is in dispute in the appeal, and the presiding member of the panel determines that the independent assistance or advice would assist in reaching a decision, WCAT must retain a health professional to obtain assistance or advice.

A request that WCAT retain a health professional should be made at the earliest practicable time.

12.2 Selection of Health Professionals

"Health professional" means a medical practitioner, a person entitled to practice medicine under the laws of another jurisdiction or any other person with prescribed qualifications [s. 277(1)].

Health professionals include [s. 315(d), s. 5 Appeal Regulation]:

- a. a person who is registered as a member of the College of Oral Health Professionals of British Columbia (formerly the College of Dental Surgeons);
- b. a person who is entitled to practice dentistry under the laws of another province,
- c. a person who is registered as a member of the College of Psychologists of British Columbia established under the Health Professions Act,
- d. a person who is entitled to practice as a psychologist under the laws of another province.

The list of health professionals must be established by the chair [s. 301(1)]. The list cannot include any person employed by the Board [s. 301(2)].

A panel seeking assistance from a health professional, whether on its own initiative or as the result of a written request from a party to the appeal, may retain one or more health professionals from the list of independent health professionals established by the chair. If there is no suitable health professional, as determined by the panel, available from the list established by the chair, the panel may retain a health professional who is not on the list and who meets the requirements in s. 301 of the Act.

12.2.1 Remuneration

The chair may determine the terms and conditions, including remuneration and reimbursement of expenses, under which a health professional may be retained under

section 249. In so doing, the chair will take into account any fee schedule established by the Board for services provided by health professionals [s. 301(3)].

12.2.2 Form of IHP

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

12.2.3 Exclusions

Health professionals will normally be disqualified from providing assistance or advice if they [s. 302(8)(a) to (f)]:

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

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

12.3 Terms of Reference

The panel must set the terms of reference for the health professional, including [s. 302(2)]:

- a) requiring a written report;
- b) setting any time periods for providing the report; and
- c) specifying any questions to be answered in the report.

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

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

12.4 Suspension Pending Health Professional's Report

WCAT will suspend an appeal from the time the panel provides the registrar's office with the completed terms of reference until WCAT receives the health professional's written report [s. 302(7)].

12.5 Medical Examination

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

If the health professional considers it necessary to examine the worker in order to provide the assistance or advice, WCAT will give written notice to the worker to attend for an examination [s. 302(3)]. Where a medical examination is conducted, the health professional may determine the form and nature of the examination.

12.5.1 Expenses for Medical Examination

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

12.5.2 Failure to Attend or Obstruction of the Examination

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

If a worker fails to attend the examination, or obstructs that examination without reasonable cause, the health professional will return the matter to the panel for direction. The panel may, after giving notice to the worker, do one or more of the following [ss. 302(4) and 297(5) WCA, s. 31(1)(e) ATA]:

- a) direct the health professional to reschedule the examination of the worker and give the worker notice of the rescheduled examination;
- b) direct the health professional to provide a report without examining the worker;
- c) decide the appeal on the available evidence;
- d) determine that the worker has abandoned the appeal;
- e) dismiss the appeal.

12.6 Written Report

A health professional retained to provide independent medical assistance or advice under section 302 must provide the panel with a written report consistent with the terms of reference. WCAT will disclose the report to the parties together with the terms of reference as well as all information provided to the health professional and invite submissions [s. 302(5) and (11)].

The duty of a health professional retained under section 302 is to assist the tribunal and is not to be an advocate for any party.

The panel may seek clarification of the report from the health professional without advance notice to the parties. Where the panel seeks clarification, both the question(s) and the response(s) must also be provided in writing and will be disclosed to the parties for submissions. Generally, the process in 13.2 will apply.

12.7 Decision

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

12.8 Other Medical Advice or Clarification

The statutory authority for seeking independent medical assistance or advice under section 302 does not prevent a panel from asking other health professionals for medical evidence or to clarify or interpret medical evidence the health professional previously provided. That evidence or clarification may be requested, for example, from a treating physician or a physician who is not on the list established by the chair under section 301(1) [s. 302(9) and 302(10)].

Rule: Normally, a panel will only ask a physician employed by the Board to clarify or interpret medical evidence they have previously provided.

13 WRITTEN SUBMISSIONS

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

13.1 Filing Submissions

Practice Directive

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

13.1.1 Submission Process

- a) *WCAT will give the appellant 21 days to provide a submission (which may include evidence not previously submitted) in addition to the information contained in their notice of appeal.*
- b) *Within the 21-day period, the appellant may request additional time, with reasons. If the appellant neither files a submission nor requests more time within the 21-day period, they lose the right to provide a submission and their notice of appeal will be considered as their submission, subject to WCAT's discretion to accept late submissions (13.1.4).*
- c) *The appellant may request additional time of 14 days or less, by telephone or in writing without making a request to extend the time for decision under section 306(6).*
- d) *The appellant may request additional time of up to 45 days in writing. Requests for additional time of more than 14 days will be considered as requests for delay under section 306(5)(b), and such requests must provide reasons. Reasons for which WCAT may give additional time include:*
 - i) *complexity of the issues under appeal;*
 - ii) *need to seek additional medical or other evidence;*
 - iii) *need to interview witnesses and provides adequate reasons for requiring more time to do so;*
 - iv) *need to seek representation;*
 - v) *personal or family health problems, bereavement, or other emergencies;*
 - vi) *pre-arranged vacation; or,*
 - vii) *current labour relations dispute which severely limits opportunity to participate.*
- e) *The maximum additional time for submissions that WCAT will give at the appellant's request is 45 days [s. 306(6)]. Any additional time runs from the end of the initial 21-day period for submissions.*

- f) *WCAT will give the respondent 21 days to provide a submission.*
- g) *If the chair has not extended the time for decision under section 306(6), the respondent may, within the 21 day period, request additional time of up to 14 days by telephone or in writing.*
- h) *If the chair has extended the time for decision under section 306(6) WCAT will give the respondent additional time upon request, and the chair will extend the time for decision by the same amount. The respondent must specify the amount of additional time they are requesting but need not provide reasons. The maximum additional time that WCAT will give to the respondent can be no greater than the amount of additional time WCAT gave to the appellant under section 306(6) [s.306(7)]*
- i) *Whether or not the appellant provided a submission, any submission from the respondent will be disclosed to the appellant with 14 days for rebuttal.*
- j) *WCAT cannot give additional time for rebuttal. The appellant should not submit additional evidence on rebuttal. If the appellant submits additional evidence on rebuttal, WCAT will decide whether to accept the evidence, and determine the procedure for disclosure of the material to the other party. The appellant who submitted additional evidence on rebuttal will not normally be given a final opportunity to respond.*

13.1.2 General

- a) *If WCAT gives additional time for submissions, WCAT may set a new decision due date (17.1.1).*
- b) *Where a submission is sent to WCAT by fax, it is not necessary to send the original document by mail. Where the party also sends the original document, WCAT will note the fax received date on the original document and destroy the fax.*
- c) *There is no need to forward to WCAT a copy of records in the Board's file as WCAT received a copy of the documents as part of disclosure.*

13.1.3 Submissions Complete

- a) *WCAT will consider submissions complete where:*
 - i) *WCAT does not receive a submission from the appellant by the most recent deadline WCAT provided for written submissions and there is no respondent participating;*
 - ii) *whether or not the appellant provided a submission, WCAT does not receive a submission from the respondent by the deadline;*

- iii) *WCAT has received the appellant's rebuttal to the respondent's submission or the appellant did not file a rebuttal by the deadline.*
- b) *Where neither party provides submissions, WCAT will consider the appeal based on the notice of appeal and the Board's record.*

13.1.4 Late or Unsolicited Submissions

- a) *WCAT will generally not accept late or unsolicited submissions and/or evidence after the deadline has passed. A party unable to meet a WCAT deadline for submissions should request an extension before the deadline has passed.*
- b) *In deciding whether to accept a late or unsolicited submission or evidence, WCAT will consider its relevance, and why it was not provided earlier.*
- c) *If WCAT decides to accept a late or unsolicited submission or evidence, WCAT will decide the procedure for disclosure to the other party, and their response. The party who provided the late or unsolicited submission or evidence will normally not be given an opportunity to respond.*
- d) *If WCAT decides to accept a late or unsolicited submission or evidence, WCAT may set a new decision due date.*

13.2 New Evidence Obtained by the Panel

- a) *Where the panel obtains further evidence or views relevant new evidence or information on the Board file that was placed there after the date of last disclosure or updated disclosure to the parties, the panel will disclose that evidence to the parties for comment.*
- b) *The panel will decide the procedure and due dates to be set for obtaining comments on the new evidence or information. Normally the evidence will first be disclosed to the appellant and their representative. The new evidence together with the appellant's response will then be disclosed to the respondent and their representative. The respondent's submission will then be forwarded to the appellant for final response. Alternatively, the panel may disclose the new evidence to both parties and invite responses from both parties at the same time, and then give each party an opportunity to respond to the other.*

13.3 Avoidance of Third Party Personal Information and Identifiers (15)

Practice Directive

To protect the privacy of third parties, that is, persons who are not the appellant or the respondent or an identified witness, submissions should not contain personal information such as names or file numbers of the workers' compensation claims of other workers.

Instead, parties should cite Review Division and WCAT decision numbers which are accessible on the internet.

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

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

14 ORAL HEARINGS

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

14.1 Before the Oral Hearing

14.1.1 Practice Directive on Scheduling

WCAT has a statutory time frame for deciding appeals. If an appellant requests an oral hearing in their notice of appeal, the appellant must be prepared to proceed with the oral hearing within two to three months of the request. The parties will normally be given at least four weeks' notice of the oral hearing date. The registry will generally schedule oral hearings without consulting the parties.

If a party requests a change of date within 14 days of the date of the notice of hearing letter, WCAT will automatically grant it on a one time only basis. If the other party subsequently requests a change of date within 14 days of the notice of the new hearing date, WCAT will grant the request on a one time only basis and set another date.

Participants are expected to check their availability as well as the availability of witnesses before the 14-day period for automatic date change expires.

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

14.1.2 Postponements

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

Factors such as the need for more time to gather evidence or information, a representative's schedule, vacation dates, and convenience to the parties will generally not be considered exceptional circumstances.

Requests for postponement outside the 14-day period must be in writing and copied to the other participating parties. The request must include the reason for the request.

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

WCAT maintains a strict postponement policy. Requests may be granted, but in limited circumstances. When deciding a postponement request, WCAT may consider a variety of factors including:

- a) whether the request is made far enough in advance so that the hearing can be rescheduled with a minimum of cost and disruption of schedules and/or the hearing date may be made available for another appeal;
- b) whether the oral hearing was scheduled in consultation with the parties;
- c) whether a prior postponement was granted;
- d) the effect of the postponement on the statutory time frame for decision making; and,
- e) any prejudice to the other parties balanced against the prejudice to the requesting party if the postponement is not granted.

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

14.1.3 Communication of the Postponement Decision

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

If the request is denied, WCAT will inform the party making the request of the following options:

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

14.1.4 New Documentary Evidence

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

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

14.2 Attendance at the Oral Hearing

14.2.1 Presence of the Appellant

An oral hearing will generally not proceed in the absence of the appellant unless the panel agrees in advance of the hearing. If the appellant's representative appears at the hearing with written instructions from the appellant to proceed in the appellant's absence, the panel may proceed with the hearing if the panel is satisfied the appellant's failure to attend and give evidence will not prejudice a participating respondent or WCAT's ability to fairly decide the appeal. The panel will make a copy of the appellant's written instructions which will be placed on the Board file.

14.2.1.1 Presence of the Appellant's Representative

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

14.2.2 Late Appearance

If the appellant appears within ten minutes of the scheduled hearing time, the panel will proceed with the hearing. If the appellant appears after ten minutes, the panel may proceed with the hearing depending on availability of the panel, whether other hearings will be delayed, and whether any respondent or witnesses have left. The panel will also consider whether the appellant's failure to attend and give evidence will prejudice a participating respondent or WCAT's ability to fairly decide the appeal. If the panel does not proceed with the hearing due to the appellant's late appearance, WCAT will consider that the appellant failed to appear (14.2.3).

Participating respondents are expected to attend the oral hearing, unless they inform WCAT that they will not be attending. Where a respondent has filed a notice of participation but is not present at the scheduled time, the panel will wait ten minutes before proceeding. A respondent (or the respondent's representative) will be allowed to participate if they arrive late, but the panel will determine the procedures that will be followed to continue the hearing.

14.2.3 Failure to Appear for an Oral Hearing

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

Section 297(5) of the WCA states that, if a party fails to comply with an order or the rules of practice and procedure, WCAT may, after giving notice to that party:

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

Practice Directive

14.2.3.1 Appellant

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

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

14.2.3.2 Adequate Reasons

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

Valid reasons would include a personal or family emergency that could not have been anticipated, or other compelling, unpredictable situations, which made it difficult or impossible for the appellant to notify WCAT in advance. Examples could include a motor vehicle accident on the way to the hearing, an acute family crisis, and acute physical or mental disability.

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

- a) vacation;
- b) a non-emergency medical or personal situation,
- c) misunderstanding the hearing notice;
- d) personal activities;
- e) forgetting about the hearing, or oversleeping on the day of hearing; or,
- f) failure to receive the hearing notice where this resulted from the appellant's failure to notify WCAT of their change of address.

14.2.3.3 No Show Decision

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

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

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

Where the appellant provides inadequate reasons for not appearing at the oral hearing, panels have the discretion to reschedule the hearing where the panel considers that the appeal should be addressed on the merits despite the appellant's failure to appear at the oral hearing, and an oral hearing is essential to consider the appeal. A panel may exercise this discretion where, for example, the issue under appeal is very significant and credibility is a central issue. In that case, the appellant will be notified that a failure to appear at the rescheduled hearing would likely result in the appeal being dismissed.

14.2.3.4 Respondent

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

If a respondent fails to appear at an oral hearing, and fails to make the necessary arrangements to participate by telephone, they will be deemed to have waived their right to participate further in the appeal.

Where a participating respondent does not attend the oral hearing, either in person or by telephone, they may send in a written submission in advance of the oral hearing. Generally, WCAT will not provide the respondent with a copy of the voice recording of the oral hearing or any new documentary evidence or argument that was submitted at the oral hearing or obtained by the panel after the hearing. Panels may, however, invite the respondent's comments if the panel considers this to be necessary or helpful to its consideration.

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

14.2.4 Attendance by Telephone, Videoconference or Other Electronic Means

The panel may permit a party or parties, their representatives, or witnesses to attend an oral hearing by telephone, videoconference, or other electronic means. In exercising its

discretion to permit a person to attend an oral hearing by telephone, the panel may consider:

- a) the person's location;
- b) the difficulty and/or expense associated with travelling to attend the oral hearing;
- c) whether not permitting a person to attend by telephone, videoconference, or other means is likely to result in postponement of the oral hearing;
- d) whether permitting a person to attend by telephone, videoconference, or other means is likely to unreasonably limit the ability of a party to cross-examine the person;
- e) the person's preference to attend by telephone, videoconference or other electronic means; any other factor or circumstance the panel considers relevant to the exercise of its discretion.

14.3 Procedure at the Oral Hearing

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

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

- o) the panel will close the hearing and state that a written decision will be sent to the parties. The panel will confirm the statutory due date for the decision, subject to any extension of time being necessary due to complexity.

Section 38 of the ATA, which applies to WCAT, provides that WCAT may reasonably limit examination or cross-examination of a witness if it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the oral hearing.

Representatives and parties to an appeal have a duty to avoid improper questioning (see 21.1.2 and 21.2.2). Improper questions include harassing, intimidating, oppressive, unduly repetitious, or offensive questions. In considering whether to limit examination or cross-examination, a panel may consider the following:

- a) any mental or physical disability that the witness appears to have; and
- b) any other matter about the witness that the panel considers relevant. For example, age, education, cultural background, and relationship to parties in the appeal may be considered.

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

14.3.1 Conduct of Oral Hearings

At oral hearings parties may expect that WCAT panels will:

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

(17.3 to 17.3.3 and 21.1 to 21.3)

14.3.2 Maintaining Order at the Oral Hearing

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

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

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

- a) call on a peace officer to enforce the order or direction [s. 48(1),(2) ATA];
- b) apply to the court to commit the person for contempt of the order or direction [s. 49(2) ATA].

Security

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

14.4 Who May Attend the Oral Hearing

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

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

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

The panel has the discretion to permit members of the public, including the media, to attend an oral hearing with the consent of all participating parties. WCAT may require observers to sign a promise of confidentiality. The panel will generally exclude witnesses from the hearing room until the panel is ready to hear their evidence.

Panels will generally allow the following persons to observe oral hearings if all parties consent: family members, friends, trainee representatives, and WCAT or Board staff wishing to observe for training purposes. Any observers must be identified at the outset of the hearing. A party may withdraw their consent at any time during the oral hearing.

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

14.4.1 Representatives

A party may be represented by counsel or an agent [s. 32 ATA]. A representative may be a lay person, union advocate, human resources personnel, lawyer, workers' adviser, employers' adviser, etc.

Where there is more than one person attending the hearing on behalf of a party to the appeal, panels should ascertain who is acting as the representative. Where the employer is a limited company, one person may be designated as the representative and one as the employer. Other persons would normally be witnesses or observers.

14.4.2 Witnesses (11.7)

Section 38 of the ATA provides that a party may call and examine witnesses, present evidence and submissions and cross-examine witnesses as reasonably required for full and fair disclosure of all matters relevant to the issues on the appeal. The panel has the right to control this examination for relevance and may limit examination or cross-examination of a witness (see 21.1.2, 21.2.2). The panel may also question any witness who gives oral evidence.

Panels will normally exclude witnesses (other than an instructing party) in order to prevent them from being influenced by the evidence of other witnesses. In deciding whether to exclude witnesses, the panel may consider whether this is a real risk, whether the evidence is relevant to a contentious issue, and whether there are good grounds for allowing the witness to remain in attendance (i.e. moral support for the appellant). Panels can place greater weight on the evidence of a non-party witness if the witness was not present in the hearing to listen to the evidence of other witnesses before the non-party witness gave their evidence.

Panels have the discretion to hear evidence from persons who were originally identified as observers or representatives. If any person (including the worker or an employer officer/employee) attends an oral hearing as an observer, the panel may require them to answer questions if the panel considers this necessary or helpful to the panel's inquiry.

14.4.2.1 Affirmation or Oath (Appendix 8)

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

14.4.3 Interpreters (11.9)

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

Friends or relatives are generally not permitted to act as interpreters, although the panel may allow this in appropriate circumstances such as where the party only needs

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

Interpreters are normally affirmed or sworn at the start of the hearing (see Appendix 8).

14.5 Record of the Oral Hearing

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

WCAT is authorized to audio record or transcribe its hearings [s. 35(1) ATA]. Where practical, WCAT will audio record oral hearings. The recording constitutes part of the record of the proceeding.

After the decision has been issued, WCAT will forward the recording to the Board for storage as part of the Board's file. If a recording is destroyed, interrupted, or incomplete, the validity of the proceeding is not affected [s. 35(3) ATA].

WCAT does not generally provide a copy of the oral hearing recording to the parties. However, where an oral hearing is adjourned for a lengthy time WCAT will, on request, ask the Board to provide a copy of the recording to the parties. WCAT will provide a copy of the oral hearing recording where a single member panel is unable to complete their duties and the appeal must be continued and completed by another member (2.7.4). WCAT may also ask the Board to provide a copy of the oral hearing recording where a procedural fairness concern is raised on a reconsideration application (20.3.2).

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

14.6 Unsolicited Post-Hearing Evidence or Submissions

Practice Directive

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

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

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

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

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

14.7 New Evidence Obtained by the Panel

Practice Directive

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

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

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

15 CONFIDENTIALITY

Section 314 provides:

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

(2) If information is disclosed for the purposes of this Part to a person other than the person the information is about, the person to whom the information is disclosed must not disclose the information except in the circumstances listed in section 235(1)(a) to (d).

(3) A person who violates subsection (1) or (2) commits an offence.

Section 235(1) provides:

235(1) If information in a claim file, or in any other material relating to the claim of an injured or disabled worker, is disclosed for the purposes of the [WCA] by an officer or employee of the Board to a person other than the worker, that person must not disclose the information except as follows:

- (a) in compliance with an enactment of British Columbia or Canada;
- (b) in compliance with a subpoena, warrant or order issued or made by a court, tribunal, person or body with jurisdiction to compel the production of information;
- (c) for the purpose of preparing a submission or argument for a proceeding under a compensation provision, an OHS provision or Part 7 [*Appeals to Appeal Tribunal*];
- (d) if the information is about a person, the person has identified the information and consented, in the manner required by the Board, to disclosure of that information.

WCAT members must not, except in the proper performance of their duties, disclose any information obtained as a member [s. 30 ATA]. Members must not be required to give evidence in any proceeding, other than a criminal proceeding, about records or information obtained in the discharge of their duties under the WCA or the ATA [s. 55 ATA].

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

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

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

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

WCAT is obliged by sections 6 and 7 of FIPPA to respond to requests within 30 days and to make every effort to respond openly, accurately, and completely. If access is denied, WCAT's response will include reasons for the refusal and explain the applicant's right to request a review of the decision by the Information and Privacy Commissioner.

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

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

15.1.1 Freedom of Information and Protection of Privacy Act (FIPPA) and WCAT Proceedings (13.3)

Once a panel issues a decision on an appeal, WCAT forwards all new documentation and correspondence pertaining to the appeal, including evidence and submissions, to the Board to be placed on the Board's file. The only exception is section 311 applications for certifications to a court. WCAT also maintains an electronic case management system which is an electronic record of appeal activity. All that WCAT keeps as a permanent record after the decision is issued is an electronic copy of the decision itself and the electronic record of appeal activity.

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

- a) personal notes, communications, or draft decisions of a decision maker;
- b) personal information, the disclosure of which would be an unreasonable invasion of a third party's personal privacy;
- c) information that would reveal advice or recommendations developed by or for a public body or a minister;
- d) information that is subject to solicitor client privilege;
- e) information relating to the exercise of the Ombudsman's function;

- f) notes or records kept by a person appointed to conduct a dispute resolution process;
- g) any information WCAT receives in a hearing from which the public, a party, or participating person/representative group was excluded;
- h) a transcription or audio recording of a proceeding;
- i) a WCAT decision which is publicly accessible.

15.2 Disclosure to Third Parties

WCAT may receive requests for information regarding appeals from third parties such as private disability insurance carriers and provincial government agencies. To protect workers' privacy, WCAT will not disclose such information without a signed authorization form from the worker, unless required by law. Where the request for information does not specifically authorize WCAT to disclose information, but it specifically authorizes the Board to do so, WCAT will refer the third party to the Board.

16 EXPENSES AND COSTS

16.1 Expenses

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

- a) the expenses associated with attending an oral hearing or otherwise participating in a proceeding, if WCAT required the party to travel to the oral hearing or other proceeding;
- b) the expenses associated with obtaining or producing evidence submitted to WCAT;
- c) the expenses associated with attending an examination required by an independent health professional under section 302(3) of the WCA.

16.1.1 General

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

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

WCAT's authority to reimburse a party's appeal expenses is derived from section 7 of the Appeal Regulation. Although there is no board of directors' policy on reimbursement of appeal expenses WCAT will generally be guided by Board policy at item #100.14 of the RSCM regarding the amount and type of expenses the Board will pay. These are calculated in accordance with the rules set out in the RSCM, items #C10-83.00 (transportation) and #C10-83.10 (subsistence allowances). For more information about appeal expenses, click [here](#).

WCAT will not automatically reimburse a party for an amount that exceeds Board policy or a fee schedule. Parties tendering an account for an expense that exceeds a fee schedule must provide a detailed breakdown of the expense requested and explain why an amount greater than the fee schedule amount is requested. If a panel is asked to reimburse an amount that exceeds a Board policy or fee schedule amount, the panel will consider the request. See 16.1.3.1 for criteria a panel will consider in deciding to reimburse expenses at a different rate or on a different basis than set out in Board policy or in a Board fee schedule.

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

Practice Directive

16.1.2 Parties' Attendance at Oral Hearings

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

16.1.2.1 Travel Expenses

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

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

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

Travel expenses are generally not paid for that portion of the journey which takes place within a distance of 20 kilometres of the oral hearing location.

16.1.2.2 When the Oral Hearing does not Proceed

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

16.1.2.3 When the Appellant has Moved

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

16.1.3 Reimbursement of Expenses (Witness and Other Evidence) (Section 7(1)(b) of the Appeal Regulation)

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

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

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

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

16.1.3.1 Reimbursement of Expenses for Expert Evidence

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

When seeking reimbursement of an expert opinion, in addition to the opinion, the requesting party must also provide a copy of their request and the expert's bill or account. Where practicable, the expert's bill or account must itemize the time and expenses incurred in rendering the opinion.

With respect to medical-legal reports and opinions WCAT will usually order reimbursement at the rates established by the Doctors of BC Fees for Uninsured Services. WCAT will usually order reimbursement for other expert reports at the rate established by the Board for the same or similar expenses. The balance is the responsibility of the party who obtained the report. Current information on Board and other fee schedules can be found on WCAT's website at www.wcat.bc.ca in the "[Present evidence and arguments](#)" section.

If there is no Board fee schedule for the same or similar expenses, WCAT will generally consider any fee schedule or similar document published by the professional association governing the expert's area of practice, if applicable.

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

Examples of the limited circumstances include:

- The issue being addressed is unusually complex.
- The expert was required to review a significant body of evidence and it was reasonable to do so.
- The expert has a high level of expertise in a unique area and it was reasonable to engage such an expert.
- There is limited availability of experts in the geographical area and it was reasonable to engage such an expert.
- The expert was required, for the purposes of providing the opinion, to test or examine parties or witnesses.

In each case, even if the circumstances above exist, the principle of proportionality must be taken into account in determining whether to award reimbursement of an expert opinion in an amount greater than the fee schedule.

16.1.3.1.1 Attendance of an Expert at an Oral Hearing

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

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

The current Board fee schedule does not include an item for attendance of an expert at an oral hearing. WCAT will be guided by the [Doctors of BC Fees for Uninsured Services – Medical-Legal Fees](#). WCAT may decline to order reimbursement of this expense if the expert's written report was not provided to WCAT at least 21 days prior to the hearing (11.6).

16.1.3.2 Evidence Previously Submitted to the Board

WCAT may authorize reimbursement of the expenses associated with obtaining or producing evidence submitted to WCAT, even if the evidence was previously submitted to the Board or the Review Division. If, for example, the Board and/or the Review Division denied reimbursement, but the WCAT panel finds that the report was useful or helpful to consideration of the appeal, or that it was reasonable for the party to have sought the evidence in connection with the review and appeal proceedings, WCAT may order reimbursement.

16.1.4 Representatives' Fees

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

16.1.5 WCAT Investigations

Where a worker is required to travel to participate in a WCAT-initiated investigation, such as a medical examination by a health professional [ss. 302(9) and 297(2)(a)], WCAT will direct the Board to make the necessary arrangements for travel and accommodation. WCAT will also direct the Board to reimburse the worker's expenses for attending the examination according to the Board's criteria (see RSCM Items #100.14, #C10-83.00 (transportation) and #C10-83.10 (subsistence allowances)). Such expenses will be reimbursed even though the worker is not required to travel and may include lost time from work and child care (12.5.1).

16.2 Costs

Pursuant to section 6 of the Appeal Regulation, WCAT may order one party to pay the costs of the other party where:

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

WCAT can only order a party, not the Board, to pay costs under this provision.

16.2.1 Legal Costs

Where a panel concludes that, pursuant to section 6 of the Appeal Regulation:

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

The panel may order one party to pay the legal costs of another party in an appeal.

In assessing legal costs under sections 6(a) or (b), the panel will generally be guided by the principles set out in Supreme Court Civil Rule 14-1(3). Cost awards made pursuant to section 6(c) of the Appeal Regulation (exceptional circumstances) will generally be less than cost awards under sections 6(a) or (b).

In awarding legal costs, the panel will consider all of the circumstances, including:

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

17 WCAT DECISION MAKING

Any decision or action of the chair or of a panel under Part 4 is final and conclusive and is not open to question or review in any court [s. 309(1)]. The Board must comply with a final WCAT decision on an appeal [s. 309(3)].

17.1 Time Frame for Decision Making

17.1.1 General

WCAT must make its decision within 180 days after receiving a copy of the Board's records [s. 306(4)(a)]. The 180-day time frame is subject to:

- a) a suspension of the appeal on statutory grounds (8.4 to 8.4.4);
- b) an extension by the chair if the complexity of the proceedings or the matter under appeal makes the time period impracticable [s. 306(5)(a)] (17.1.2);
- c) an extension where the appellant requests a delay to submit new evidence or make additional submissions [s. 306(5)(b)] (13.1 to 3.1.4);
- d) an extension where the respondent requests a delay to submit new evidence or make additional submissions [s. 306(7)] (13.1.2 to 13.1.4);
- e) a shorter time period being prescribed by the Cabinet [s. 306(4)(b) (Note: Cabinet has not provided a regulation to shorten this time.)].

The chair may extend the time frame even if the applicable time period has expired [s. 306(8)].

The 180-day time frame for decision making applies to all appeals brought under sections 288 and 289. It does not apply to other types of applications such as extensions of time to appeal, reconsiderations, or certifications to the court under section 311.

17.1.2 Extension of Time for Complexity

The chair may extend the time frame where the complexity of the proceedings in the appeal or the matter under appeal makes the time frame impractical [s. 306(5)(a)]. Complexity of the proceedings concerns the procedural steps in the appeal; complexity of the matter concerns the issues or subject matter of the appeal.

17.2 The Written Decision

17.2.1 Hallmarks of Quality Decision Making

A good decision:

- a) clearly identifies the issues at the outset;
- b) identifies a clear set of relevant findings of fact fairly drawn from the evidence;

- c) where there is conflicting relevant evidence, explicitly identifies the findings of fact on which the conclusion is based and the reasons for the findings of fact, that is, why some evidence was preferred over other evidence;
- d) responds to the relevant submissions and arguments;
- e) identifies and applies relevant law and policy, including WCAT precedent panel decisions;
- f) strives to be consistent with the general approach in other WCAT decisions affecting similarly situated parties and issues, or provides a rationale for not being consistent with other WCAT decisions affecting similarly situated parties and issues;
- g) uses plain language where possible and uses technical and legal terminology in a manner consistent with other decisions;
- h) makes the panel's reasoning clear and understandable and leads to a logical conclusion that resolves the issues; and,
- i) is written without identifiers, as provided in 19.2.

17.2.2 Decision-Making Principles

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

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

A final decision on an appeal must be made in writing with reasons [s. 253(3)]. All members of the panel that made the decision will sign the decision either manually or electronically. Written reasons will be provided for any dissent, signed by the panel member. WCAT decisions will be written in clear terms, using plain, direct language where possible. Short and concise decisions will be provided where possible. A decision will focus on the issue(s) under appeal, and need not recite the background evidence in detail.

WCAT must not fetter a discretion conferred on it under the WCA and policy. However, taking into account individual circumstances and providing a decision according to the merits and justice of the case under section 303 does not mean that the panel's focus is solely on the individual case. A decision must also be consistent with the WCA, policy, and WCAT precedent decisions.

The legislature has taken specific measures to promote consistency and predictability. These include sections 303(2) and 251 concerning the binding nature of policies of the board of directors, and section 303(3) concerning the binding nature of WCAT precedent

panel decisions. Having regard to this legislative intent, WCAT will recognize consistency and predictability as important values in adjudication.

17.2.2.1 Disclosure of Prior Decisions

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

17.3 Reasonable Apprehension of Bias and Conflict of Interest

17.3.1 Reasonable Apprehension of Bias

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

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

For greater certainty:

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

It is the responsibility of each member to actively inquire into and consider any circumstance which might raise a perception of bias regarding any of the member’s responsibilities. On recognizing a possible issue of bias, the member should consider whether it would be appropriate to withdraw. This may involve discussion with other panel members, if any, or tribunal counsel, the chair, or the registrar. Alternatively, the member could disclose the possible issue of bias to the parties in the appeal and invite submissions on whether the member should withdraw or continue with the appeal.

17.3.2 Conflict of Interest

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

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

For greater certainty:

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

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

17.3.3 Procedure

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

Parties are expected to make any allegations regarding a member's possible bias or conflict of interest related to an appeal at the earliest practicable opportunity after learning the circumstances that give rise to the allegation. The party making the allegation will be required to provide details in writing to the panel of the evidence and argument it relies upon to establish the allegation. At the panel's option, the details may be presented orally.

If, after considering that evidence and argument and any evidence and argument the other parties present on the issue, the panel determines a possible bias or conflict of interest exists, the appeal will be returned to the registry for reassignment. If the panel concludes that neither actual nor apparent bias exists or that a real or apparent conflict of interest does not exist, the panel must inform the parties in writing and provide reasons. This may be by preliminary decision dealing only with the bias or conflict of interest allegation, or as a preliminary determination made as part of the final decision in the appeal.

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

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

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

17.4 Appeal Outcome

With respect to each issue addressed in a decision, the panel will normally state whether the appeal is allowed, in whole or in part, or denied. In the conclusion, the panel will state whether the decision under appeal was confirmed, varied, or cancelled and provide a summary of its decision on each issue [s. 306(1)].

On an appeal concerning a reopening application [s. 289(2)], the panel will determine that the matter that was the subject of the application under section 125(1) [s. 306(2)] must be reopened, or may not be reopened (3.1.4).

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

17.4.1 Findings versus Recommendations

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

17.4.2 Signing Decisions

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

17.5 Notice of Decision

WCAT will send each party a copy of its final decision [s. 52(1) ATA] as well as any amendments or addenda to the final decision.

17.5.1 Filing Final Decision in Supreme Court

A party to a final decision may file a certified copy of the final decision with the Supreme Court [s. 309(4)]. A filed decision has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court [s. 309(5)].

18 CERTIFICATIONS TO COURT

18.1 Introduction

The *Workers Compensation Act* in section 311 gives WCAT the power to make determination(s) and provide a certificate to a court in certain matters which are relevant to a court action and that are within the jurisdiction of the Board (3.1.5). WCAT also provides reasons for its determination(s).

18.2 Jurisdiction

18.2.1 General

In order for WCAT to certify a matter to court, there must be a court action concerning a personal injury, death, or a disability caused by occupational disease. If there is no court action, WCAT has no jurisdiction to determine any matters and there cannot be an application for certification to court.

As was pointed out by the BC Supreme Court, an application "... is not a separate proceeding. It is a step within the action that is mandated by legislation." (*Hommel v. Cooke et al.*, 2005 BCSC 658).

Thus, the nature of a proceeding for a certification to court is two-fold. While it is a step in the underlying court action, the Act states that it is also treated as an appeal. The Act provides that Part 7 ("Appeals to Appeal Tribunal" including the provisions dealing with WCAT, appeal rights, appeal procedure, and other general items) applies to certificates to court as if the proceedings were an appeal. The only provision of Part 7 of the Act that does not apply is the time for making a final decision on the application (17.1.1).

18.2.2 Definition of Court and Action

The Act provides that "court" includes the Civil Resolution Tribunal. As well, the Act provides that "action" includes proceedings brought before the Civil Resolution Tribunal. Typically, aside from the Civil Resolution Tribunal, applications involve court actions before the Provincial Court of B.C. or the Supreme Court of B.C. A court may also include a court outside of the province, such as the equivalent superior trial court in another province.

18.2.3 Scope of Determination(s)

WCAT may determine any matter that is relevant to the court action and that is within the jurisdiction of the Board. This may include determining, at the time the cause of action arose:

- a) was the party a worker,
- b) if so, did any injury, death or disability arise out of, and in the course of, the worker's employment,

- c) was the other party an employer engaged in an industry within the meaning of the compensation provisions,
- d) if so, did any action or conduct of the employer, or its servant or agent, which caused the alleged breach of duty of care, arise out of and in the course of employment within the scope of the compensation provisions,
- e) was the other party a worker,
- f) if so, did any action or conduct of that worker, which caused the alleged breach of duty of care, arise out of and in the course of employment within the scope of the compensation provisions.

WCAT can make determinations about persons who have not applied for compensation from the Board as a worker or dependent or who have not registered with the Board as an employer.

18.3 Who May Apply

The Act provides that the court, on its own motion, or a party to the court action may request that WCAT make a determination(s).

Although the Act states that the matter determined by WCAT must be within the jurisdiction of the Board, there is no requirement that an applicant have an application for compensation or be receiving benefits from the Board. As well, there is no requirement that an applicant be registered with the Board as an employer (18.4).

More than one party to the legal action may request that WCAT make a determination(s) and initiate an application for a certificate to court. Alternatively, a respondent may identify additional issues for certification on an application in which they are participating (18.6.5.1).

18.3.1 Deceased Person – Standing of Estate

The estate of a deceased worker or employer may initiate, participate in, or continue an application for a certificate to court. If the identity of the estate's representative needs to be established, the documentation noted in item #4.6 is required (4.6).

18.3.2 Who May Respond

A person who has standing to initiate an application for a certificate to court has standing to respond, that is, be a respondent, to the application. In other words, any other parties to the court action may respond to an application by another party to the court action.

18.4 Preliminary Matters

18.4.1 Court Action Prohibited (Statutory Bar)

Section 127 of the Act prohibits a worker (or family member or dependant) from filing a court action against their employer, another employer, or another worker for a breach of

duty of care or other cause of action, for injury, disablement, or death, where the action or conduct causing the breach of duty of care or other cause of action arose out of and in the course of employment.

While WCAT does not determine whether a court action is prohibited or “barred” under section 127, a party may apply to the court to determine whether the action should be dismissed based on section 127.

As a preliminary matter, WCAT does not require that a defence under section 127 be raised in the court action for an application to proceed. However, raising such a defence may still be necessary for the purposes of the court action.

18.4.2 Application for Compensation

As noted above in item #18.4, there is no requirement that an applicant have an application for compensation or be receiving benefits from the Board. However, plaintiffs (or those parties initiating the court action) should consider filing an Application for Compensation with the Board on a provisional basis pending the outcome of any application to WCAT. This protects the plaintiff’s (or party’s) right to proceed with a workers’ compensation claim should the court action ultimately be prohibited under section 127. As well, there are time limits for filing an application for compensation contained in the Act [s. 151).

18.4.3 Registration with the Board as an Employer

As noted above in items #18.2.3 and #18.3, there is no requirement that an applicant be registered with the Board as an employer.

18.5 How to Apply

There is no time limit to apply for a certificate. WCAT will accept an application any time after a court action is commenced.

RULE: An application must be initiated by filing a notice of application with WCAT.

A notice of application must [s. 292(2)]:

- a) be in the form authorized by WCAT's rules. A specific application form for certificates to court is accessible on the [WCAT website](#),
- b) identify the court action, the court registry and the registration number (or other information to identify the specific level of court and associated file number), whether the court action concerns a personal injury, death, or a disability caused by occupational disease (including the date of accident, injury or death), and whether a trial or hearing date is set in the action,
- c) include a copy of the Notice of Civil Claim/Notice of Claim (and any other pleadings or relevant documents) filed in the court action,
- d) state the determination(s) requested and the person(s) for whom the determination(s) are sought (including their respective status (if any) in the court action),
- e) include information about each party named in the court action, as well as their alleged employer (if any),
- f) identify any related court action(s) (if any) arising out of the same accident/incident and whether a certificate is required for those action(s),
- g) include information on the applicant's readiness to proceed with the application (18.8.2),
- h) contain the name, address and telephone number of the applicant, and if the applicant has an agent to act on their behalf in respect of the application, the name of the agent and a telephone number at which the agent may be contacted during regular business hours,
- i) include an address for delivery of notices in respect of the application,
- j) be signed by the applicant or the applicant's agent, and

The applicant must send a copy of the application to the other parties in the court action, and advise WCAT that they have done so.

An agent may act on behalf of more than one applicant. In that case, the notice of application must identify each applicant that the agent acts on behalf of and the respective status of each applicant in the court action.

WCAT also seeks information on the notice of application about the applicant's preference for the method of hearing and information to support disclosure of relevant Board claim files (if any).

If the notice of application is deficient, WCAT will allow a reasonable time for it to be corrected [s. 292(3)]. If the applicant does not correct the deficiencies within the time allowed, WCAT will close the application as incomplete and take no further action. If the applicant later wishes to pursue an application, they must make a new application.

18.5.1 Initiating an Application

18.5.1.1 Notice of Application Must Be In Writing

RULE: An applicant must initiate the application for a certificate to court in the [prescribed form](#). This may be done by delivering, mailing, sending by facsimile transmission (fax), or sending by electronic mail or other electronic means (email) to WCAT a completed notice of application form containing the required information in English.

An applicant must meet the requirements noted in item [#18.6](#) or WCAT will not consider an application to be initiated.

Telephone notification is not sufficient to initiate an application. WCAT will not accept telephone notice of intent to file an application.

Where the application is initiated by fax or email, it is not necessary to send WCAT the original document. Where the applicant also sends the original document, WCAT will verify the receipt of the fax or email (along with the received date) and destroy the original document. WCAT notice of application forms are accessible on the WCAT website.

18.5.1.2 Incomplete Notice of Application

RULE: Where the notice of application does not meet the requirements of item [#18.6](#), the appellant must provide a complete notice of application within the time WCAT subsequently allows (normally 21 days).

Where an applicant does not provide the required information by the date WCAT subsequently allows, WCAT will treat the application as incomplete and as not initiated. WCAT will close the application and take no further action. If the applicant later wishes to pursue an application, they must make a new application ([18.9](#)).

18.5.1.3 Determination(s) Requested

RULE: To meet the requirements of item [#18.6](#), it is sufficient for the applicant to provide a brief statement of the determination(s) requested. The applicant should state the determination(s) requested and the person(s) for whom the determination(s) are sought (including their respective status in the court action). If a determination is requested concerning the status of a person who is not a party to the court action, an explanation should be provided as to why this is relevant to the court action.

18.5.2 Authorizations

18.5.2.1 For Representatives to Act

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

The WCAT authorization of representative form for applications for certificates to court is accessible on the WCAT website.

Where a party (see item #18.6.6) is represented by a lawyer (legal counsel) in the court action, WCAT will not normally require any other form of representative authorization (6.3.1). However, WCAT may require an authorization from a representative (including a lawyer) of an interested person.

18.5.2.2 For WCAT to Obtain Evidence

RULE: By signing the WCAT notice of application or notice of participation form, whether they are the applicant or the respondent, a person or entity authorizes WCAT to obtain additional evidence, such as medical records or employment records, with respect to them.

18.5.3 Service and Delivery of Documents

WCAT's rule on the obligation of parties to advise WCAT of any change of address applies to applications for certificates to court (5.3.1). As well, WCAT's practice directive on what steps WCAT will take when mail to a party is returned as undeliverable applies to applications for certificates to court (5.3.2).

18.5.3.1 Service and Delivery of Documents by WCAT to Parties

Section 344 of the Act sets out the principles that WCAT must apply with respect to the service and delivery of documents. WCAT's general practice on the service and delivery of documents applies to the service and delivery of documents related to applications for a certificate to court (5.3).

18.5.3.2 Service and Delivery of Forms, Correspondence, Submissions, and Evidence by Representatives on Other Participants

RULE: All participating parties and interested person(s) who are represented must provide copies of their forms, correspondence, submissions and evidence to all other participating parties and interested person(s) at the same time as they send those documents to WCAT. The only exception to this is copies of a transcript for examination for discovery (18.10.1).

18.5.3.3 Service and Delivery of Forms, Correspondence, Submissions, and Evidence by Parties to WCAT

WCAT accepts service, delivery, and filing of forms, correspondence, submissions, documents and other evidence from parties and interested person(s), as well as their representatives through delivery, mail, facsimile transmission, or other electronic means. The latest information on how to file material with WCAT is available on WCAT's website.

Where a form or document is filed with WCAT by fax or other electronic means, it is not necessary to send WCAT the original document. Where the party or interested person also sends the original document, WCAT will verify the receipt of the fax or email (along with the received date) and destroy the original document.

As WCAT primarily operates in an electronic environment, parties and interested person(s), particularly representatives, are encouraged to file forms, documents, submissions, and evidence to WCAT through electronic means. Further information specific to the submissions and evidence process is discussed in item [#18.10](#).

18.6 Registration of Applications

18.6.1 Registration

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

- a) the notice of application is complete;
- b) additional information is required;
- c) notification of the Board of the application is required (where it appears the Board may be subrogated, or for purposes of disclosure of any associated claim file(s));
- d) the application should be placed in the holding period ([18.8.2](#));
- e) the application should be dismissed under section 31(1) of the ATA or deemed withdrawn ([18.9.2.2](#)).

18.6.2 Acknowledging Receipt

WCAT's practice regarding acknowledgment of receipt of appeals applies to receipt of applications for a certificate to court ([6.2](#)).

18.6.3 Representatives

Section 32 of the ATA allows a party to be represented by counsel or a lay agent ([6.3](#)).

18.6.4 Board Notification

The Registrar's office will notify the Board during the registration of an application in the circumstances outlined below.

18.6.4.1 Board Subrogation to Rights of Worker to Pursue Court Action

The Act provides that where a worker has claimed compensation, the Board is subrogated to the rights of the worker to pursue a court action [s.130(2)]. The Board has exclusive jurisdiction to determine whether to maintain an action or compromise the right of action and the Board's decision is final and conclusive.

Where WCAT receives an application and the registrar's office determines that the plaintiff or initiating party in the court action has received workers' compensation benefits, WCAT will notify the Board that it appears that the Board is subrogated to the rights of the worker to pursue a court action. WCAT will ask the Board to confirm whether it has authorized the worker to pursue the court action. If the Board notifies WCAT that the court action is not authorized, WCAT may dismiss the application (see items #18.9 and #8.1).

18.6.4.2 Disclosure of Board Claim Files

As soon as practicable, WCAT must notify the Board of an application for the purposes of facilitating the Board's obligation to provide copies of relevant claim files [s. 295(2)]. The registrar's office will notify the Board of an application once the application is determined to be complete and valid, all necessary information is received from the parties to the court action, and any participating respondents and interested persons (if any) are identified.

The Board must, as soon as practicable, provide WCAT and any participating parties with a copy of its records respecting the matter. In applications for certificates to court, the "matter" includes any claim files established for any of the parties to the court action and for whom a determination is requested. Disclosure of the claim files for the purpose of complying with the requirements of procedural fairness is authorized under the Act as being necessary to the discharge of WCAT's obligations (see items #1.5.3.1 and #6.4). The WCAT panel will determine the extent of disclosure to be provided to a participating interested person.

18.6.5 Notification of Respondents

WCAT will notify respondents, that is, any other party to the court action, of the application and ask them to complete and return a notice of participation if they wish to participate.

18.6.5.1 Participating Respondents

See items #6.5.1 and #1.5.3.1 of the MRPP for the entitlement of participating respondents to an application for a certificate to court.

A respondent may identify additional issues for certification by WCAT without making a separate application.

18.6.5.2 Non-Participating Respondents

If a respondent(s) does not submit a notice of participation, WCAT will provide no further information or notices concerning the application, apart from a copy of the final certificate.

18.6.6 Notification of Interested Person(s)

Other persons or entities who might be directly affected by WCAT's determination(s) may be given notice of and standing to participate in the application, even though they are not parties in the court action.

In considering whether to notify and invite an interested person, the panel will consider whether the person's or entity's legal and/or financial interests are directly affected or whether the application prejudicially affects the person or entity.

Examples of an interested person or entity may include the alleged employer of a party who is alleged to have been a worker at the time of the injury, a party in a related legal action, and a potential party to a legal action arising from the same event.

The notification of the application and invitation to participate for interested person(s) will be completed by the Registrar's office at the direction of the assigned panel.

If an interested person(s) does not submit a notice of participation, WCAT will provide no further information or notices concerning the application, apart from a copy of the final certificate and determination(s).

18.6.7 Participating Person/Representative Group

See item #6.6 for WCAT's authority to request any person or representative group to participate in an application.

18.7 Preliminary Processes

18.7.1 Usual Processes Apply

WCAT will follow its usual processes for considering appeals as set out in this MRPP as far as they are applicable. Where there is a different process for applications for certificates to court, WCAT's processes are outlined in this item.

18.7.2 Streaming: Specialty

The registrar's office will assign each application to the specialty stream and each application will be assigned to a panel at the outset (7.1). The panel will determine the appeal method, who to notify and invite to participate, and other matters.

18.7.3 Joining Applications

Item #7.2 discusses WCAT's authority to order that related matters be considered together in one hearing under the Act, as well as WCAT's authority under the *Administrative Tribunals Act* to combine matters, hear them at the same time, or one immediately after the other, or delay processing one or more matters until another of them has been determined.

18.7.3.1 Related Court Actions

Practice Directive

Where there is a related court action arising from the same event or incident, WCAT will normally notify the parties to that action, as well as any other persons or entities as directed by the assigned panel, about the current application and invite them to either participate in the current application or to make a separate application (such as where there are additional determination(s) not requested in the current application).

Where a separate application is initiated, WCAT will normally process them together. Generally, one panel will be assigned to the applications and one decision addressing all applications and determinations requested will be issued. However, WCAT will issue a separate certificate for each court action.

A related court action may include any action filed against the Insurance Corporation of British Columbia (ICBC) under Part 7 of the Insurance (Vehicle) Regulation.

18.7.3.2 Related Appeals

Where there is an appeal filed or pending before WCAT that addresses the same matter as the application, one panel may consider both matters (the appeal and the application) depending on such factors as whether both matters raise similar issues, their respective methods of hearing, their stages in the appeal and application process, and the effect on the statutory time frame for making a decision on the appeal.

18.8 Order of Processing

While no statutory time frame applies to the decision making process for applications, WCAT recognizes that an orderly process is required to provide timely decisions to applicants, while being cognizant of WCAT's overall resources and obligations under the Act. As well, WCAT respects that the parties may require time to collect the evidence and make submissions and/or prepare for an oral hearing in support of their application. Moreover, given that the application is a step in a court action being heard by another body, there may be timelines, rules, and processes (including settlement discussions, dispute resolution, or mediation) in the court action causing the parties to either require priority processing of the application, to put the application on hold for a specified time period, or to withdraw the application.

18.8.1 General

In order to achieve orderly processing of applications, WCAT will distinguish between applications in which the parties are ready to proceed and those in which the parties wish to defer providing evidence and submissions on applications until a later date. WCAT will allow parties to proceed with their applications, or to place their applications “on hold” if additional time is required before proceeding. If a party fails to “reactivate” the application after the holding period has expired, WCAT may deem the application withdrawn (18.9.2.2).

Also, WCAT will consider requests for priority processing in exceptional circumstances (18.8.3).

In general, WCAT will focus its attention on applications where the applicant is ready to proceed. The position of an application in WCAT’s processing queue will generally be based on the date of advice from the parties that they are ready to proceed, irrespective of the date the application was initiated.

In processing applications where the parties advise that they are ready to proceed, WCAT cannot guarantee that the application will be immediately dealt with, as the Registrar’s office must take into account the volume of priority applications, the overall volume of applications, and the volume of statutory time-frame appeals and other applications.

18.8.2 Holding Period

Practice Directive

WCAT may put applications on hold where the parties are not ready to proceed with the application, either on a voluntary basis or on WCAT’s initiative where a party has failed to respond to WCAT’s request for submissions. However, the following guidelines apply and WCAT may deem an application withdrawn after the expiry of the holding period.

As well, the holding period should not be used to seek additional time periods of short duration in order to gather evidence or conduct examinations for discovery, when WCAT has requested submissions. In that case, the party should request additional time for submissions with reasons, WCAT will consider those reasons and WCAT will set time frames for the further processing of the application.

How to place an application on hold

An application may be placed on hold in the following circumstances:

a) *By applicant when new application made*

When an application is made, the applicant will be asked to identify whether the application should be considered on hold, or whether WCAT should proceed with inviting submissions. The applicant will not need to provide reasons. Only the applicant has the

right to request that the application be placed on hold without reasons when the application is made.

b) *By applicant at any time during processing of application*

As well, at any time during the processing of an application, the applicant may request the application be put on hold. However, as the processing may have already begun, the applicant will be asked for reasons to support their request.

c) *By respondent at any time during processing of application*

The respondent may request that an application be placed on hold once it is initiated and considered complete; however, the respondent must provide reasons for the request, as well as state the time required. Consideration will be given to factors such as the date scheduled for a further examination for discovery, or the dates on which additional evidence was requested and the reasons for delay in obtaining such evidence.

d) *By WCAT*

An application may be placed on hold by WCAT if:

- i. an applicant fails to provide their written evidence and submissions within 21 days of being requested by WCAT to do so, and does not request additional time; or*
- ii. an applicant fails to provide their evidence and submissions within the additional time granted by WCAT.*

Objections to an application being placed on hold

Where a party has requested that an application be placed on hold, the other party may make written submissions objecting to this on the basis that the other party is not exercising reasonable diligence in pursuing the application.

In considering such a request, WCAT may ask the other party to advise of the steps taken to prepare for the application and any reasons for delay. Consideration will be given to the amount of time which has elapsed since the application was initiated, and the time when WCAT will likely be able to proceed with the application.

Application confirmed on hold and further steps

If an application is placed on hold, WCAT will confirm this in writing and will defer the further processing of the application, including scheduling of an oral hearing or requesting written submissions concerning the application.

The application will be placed on hold for an initial period of one year. During this time, it is open to the parties to advise WCAT at any time that they are ready to proceed

(reactivation of the application) or whether the application should be deemed withdrawn (18.9.2.2). During this initial period, WCAT will not make any contact with the parties and the onus is on the parties to contact WCAT if their situation changes and they are ready to proceed or need to withdraw the application.

After the initial holding period expires, WCAT will inquire with the applicant as to whether they are ready to proceed (reactivation of the application) or whether the application should be put on hold for a further year. If a further holding period is required, reasons should be provided. If no response is received, WCAT will deem the application withdrawn (18.9.2.2).

After the expiry of the second holding period, WCAT will notify the applicant that the application will be deemed withdrawn unless submissions are received within 21 days (18.9.2.2). Submissions should address whether the application should be re-activated, whether there are exceptional circumstances warranting a further holding period (as opposed to a new application), or whether the application should be deemed withdrawn. If no response is received, WCAT will deem the application withdrawn.

Reactivation

If a party advises that they are ready to proceed with the application, it is reactivated and WCAT will proceed with the application. The position of an application in WCAT's processing queue will generally be based on the date the parties advise parties that they are ready to proceed, irrespective of the date the application was initiated.

18.8.3 Request for Priority Processing

WCAT may give priority to an application where exceptional circumstances are demonstrated and the parties are ready to proceed.

Where a party is requesting priority processing for exceptional circumstances based on an impending trial, court, or hearing date or where a determination(s) is required for pre-trial purposes, the party should make such a request a minimum of 8 months prior to that trial, court, or hearing or prior to the date that the determination(s) is required. WCAT may grant or deny such a request based on factors outlined in item #18.8.1, as well as the need to leave adequate time for the submissions and/or WCAT hearing process, as well as for WCAT to render its determination(s). If the request is not made within the minimum time period, WCAT will generally deny the request.

18.9 Summary Decisions

The guidelines in item #8 of the MRPP on summary decisions apply to applications. This includes WCAT's authority to dismiss all or part of an application. However, as there is no time limit for applying for a certification, the guidelines on extending the time to appeal do not apply.

18.9.1 Stay of Decision

As noted in item #8.3, unless WCAT orders otherwise, an application does not operate as a stay or affect the operation of a decision or order under appeal. While there is no “decision” or “order” under appeal in an application to WCAT for a certification to court, there may be decisions or orders in an associated Board compensation or other files. In those circumstances, unless WCAT orders otherwise, the filing of an application does not operate as a stay or affect the operation of those decisions or orders.

As well, once an application is filed with WCAT, it does not automatically operate as a stay of the court action. It is up to the parties to the court action to apply to the court for a stay of proceedings.

18.9.2 Withdrawals

18.9.2.1 Withdrawal by Applicant

An applicant may withdraw an application at any time. This does not affect the right of the applicant (or any other party to the legal action) to make a new application in the future, provided that the court action is in process (18.9.2.3).

18.9.2.2 Deemed Withdrawal

WCAT will not dismiss an application on a summary basis due to a failure to diligently pursue the application. Instead, the holding period may be utilized (18.8.2).

However, if the party fails to respond to WCAT’s notice upon the expiry of the initial or any additional holding period, WCAT will deem an application withdrawn.

Following any deemed withdrawal, it will remain open to any party to the court action or the court to initiate a new request to WCAT for a certificate provided that the court action is in process (18.9.2.3).

18.9.2.3 Effect of New Application

When a new application is made after the original application was withdrawn by a party or WCAT deemed the original application withdrawn, the new application is treated as a new one for the purposes of the order of processing (18.8).

18.10 Written Submissions and Evidence

If a panel decides that an application will proceed by written submissions, the panel will review any Board file(s), written evidence and argument submitted by the parties and interested person(s), and any further evidence the panel obtains (see item #11 on evidence and items #13.2 and #14.7 on new evidence obtained by the panel).

As applications are placed in the specialty stream, the panel will decide the procedure and due dates to be set for obtaining submissions and/or evidence.

All participating parties and interested person(s) who are represented must provide copies of their forms, correspondence, submissions and evidence to all other participating parties and interested person(s) at the same time as they send those documents to WCAT (18.5.3.2).

Evidence may be submitted in any form including handwritten statements of witnesses, business records, sworn affidavits, or transcripts of evidence given under oath at an examination for discovery (18.10.1). Evidence and submissions should not contain irrelevant personal information and identifiers, particularly of interested persons who are not parties to the court action (13.3).

RULE: An application will be placed on hold if an applicant fails to provide their written evidence and submissions within any timelines set by WCAT and does not request additional time; or an applicant fails to provide their evidence and submissions within the additional time granted by WCAT (18.8.2).

18.10.1 Transcripts of Examinations for Discovery

Evidence in an application may be submitted in the form of a transcript of evidence given under oath at an examination for discovery.

The discovery process generally occurs at the Supreme Court of BC (or an equivalent superior court outside of B.C.) and is a way for the parties to discover the other side's view of what happened in the case. The examination for discovery is a meeting where one party asks an opposing party a series of questions. A court reporter attends and the Supreme Court of B.C. (or equivalent) has rules about how to arrange the examinations, what questions may be asked, and how to obtain a transcript (or written record of the questions and answers given) of the examination for discovery.

RULE: Participating parties to the court action must provide WCAT with a complete copy of a transcript of an examination for discovery if one is conducted in the legal action. WCAT accepts electronic copies of the transcript. However, participating parties to the court action are not required to provide a courtesy copy of the transcript to any other party to the legal action or to a participating interested person(s). Participating parties are responsible for obtaining their own copy of the transcript (18.5.3.2).

If there are participating interested person(s) in the application, WCAT will notify the person examined, or their authorized representative, that the examination may be disclosed to persons who are not parties to the legal action. WCAT will give the person examined an opportunity to request that WCAT sever material from the transcript on the basis that it is irrelevant and involves a significant privacy concern (15).

Once submissions are obtained on whether material should be severed or not, WCAT may request the party submitting the transcript to provide a copy of the transcript in full to each participating interested person(s) or WCAT will provide a redacted copy to the participating interested person(s).

18.10.2 Copies of WCAT Decisions, Board Policies and Court Decisions

WCAT does not require copies of previous WCAT decisions and/or WorkSafeBC policies to be included with any written submissions. A correctly identified citation of the relevant decision(s) and/or policy is sufficient.

Citations from publicly accessible website should be provided for court decisions, or copies should be provided of the court decisions.

18.11 Oral Hearings

If a panel decides that an application will proceed by way of an oral hearing, item [#14](#) applies to the scheduling and procedure of that oral hearing.

18.12 Confidentiality

The confidentiality obligations and guidelines in item [#15](#) apply to WCAT's processing and deciding of applications. The only exception is the retention of the material once WCAT issues a certificate and determination(s) ([18.4](#)).

18.13 Expenses and Costs

Expenses and costs are normally addressed by the court in the court action. WCAT does not normally award expenses or costs in an application ([16](#)).

18.14 WCAT Determination(s)

The general principles contained in items [#17.2](#) and [#17.4.2](#) about the written decision apply to WCAT certificates to court.

WCAT will issue both a certificate and determination(s), provide a copy to all parties to the legal action, any identified interested person(s) or groups, and the Board.

WCAT files the certificate and determination(s) with the court, if it is based in British Columbia. If the court action is taking place outside of British Columbia, the applicant is responsible for filing the certificate and determination(s) with the appropriate court. WCAT provides a copy of the filed certification and determination(s) only to the parties to the court action.

After the certificate and determination(s) are filed with the court, WCAT makes the determination(s) and certificate publicly available. Names and other identifying information are not removed, given that court documents are publicly available.

WCAT retains the material related to the application and does not forward any material to the Board for placement on the Board's file in relation to claims by any parties to the court action (15.1.1).

18.14.1 Effect of Determination(s) on Court Action

WCAT does not determine the effect of the certificate on the court action, particularly whether a court action is prohibited or "barred" under section 127. Following the issuance of a section 257 certificate, a party may apply to the court to determine whether the action should be dismissed based on section 127 and the findings contained in WCAT's certificate.

18.14.2 Post-Determination

Post-determination communications should be in writing and directed to TCO. See item #20 for further information. This includes requests for additional determination(s) where WCAT has issued a certificate and determination(s) in a matter.

19 PUBLIC ACCESS TO WCAT DECISIONS

19.1 General

Section 280(2)(g) provides that the chair is responsible for providing public access to WCAT decisions in a manner that protects the privacy of the parties to the appeal. WCAT must also comply with the confidentiality and privacy provisions of both the WCA (s. 314) and FIPPA.

WCAT has an internet website (www.wcat.bc.ca) with a search engine which permits public access to its decisions. WCAT decisions are posted to the WCAT website soon after they are issued.

In general, panels write decisions without parties' personal identifiers so that no severing of identifying information is required. As section 311 certificates are publicly accessible after being filed in the legal action at a British Columbia court registry, personal identifiers are not removed.

Practice Directive

19.2 Writing Decisions Without Identifiers

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

19.2.1 Confidentiality and Privacy

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

19.2.2 Names

The following names will not be used in decisions: names of parties (such as the worker and employer), names of lay witnesses, names of Board officers (such as case managers, vocational rehabilitation consultants, and review officers). Board medical advisors will be identified by name while others will normally be referred to by title (e.g. case manager, review officer, etc.).

The highest level of protection of privacy is afforded to parties and lay witnesses. Panels may identify parties and lay witnesses by role (the worker, employer, manager, etc.) or by initial.

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

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

19.2.3 Representatives

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

19.2.4 File or Appeal Numbers

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

19.2.5 Payroll, Revenue Data, and Salary Information

Panels will protect employers' payroll and revenue data in decisions. In some cases, protecting the identity of the employer will be sufficient as the payroll or revenue data would not be identifiable by itself. Where the reasons and analysis in a WCAT decision might tend to identify the employer, it may be necessary for the panel to refer to the payroll or revenue data in general or approximate terms.

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

19.2.6 Geographic Locations

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

19.2.7 Quotations

Panels must edit quotations from sources such as medical opinions and submissions to protect privacy. This will normally be accomplished by substituting a descriptive term for a name, and using square brackets to show the change, e.g. [the worker].

19.2.8 Corrections or Revisions – Inadvertent Error

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

19.2.9 Certification to Court

WCAT files a Certification to Court in a legal action in the appropriate British Columbia court registry. Accordingly, after filing, WCAT will make its decisions under section 311 publicly available without removing names and other identifying information.

However, a Certification to Court provided for filing in a court registry outside of British Columbia will be edited for privacy, as it is provided to the parties and WCAT does not file it in the legal action.

19.2.10 Second Level of Editing in Limited Circumstances

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

19.2.11 Exception

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

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

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

19.3 Noteworthy Decisions

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

Noteworthy decisions fall into two distinct categories:

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

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

20 POST-DECISION

A decision of WCAT is final and conclusive and is not open to question or review in any court [s. 309(1)]. There is no further right of appeal and the Board must comply with a final decision of WCAT [s. 309(3)]. This includes summary decisions (such as those concerning applications for extensions of time to appeal or dismissals or withdrawals of appeals) and decisions on the merits. It does not include referrals back to the Board under section 297(3), and interim decisions such as determinations on whether an appeal will be heard orally or in writing, whether an order will be issued, or findings of fact made prior to a final decision on an appeal.

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

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

The WCA contains some limited exceptions to the general principle of *functus officio* where it is necessary to correct a clerical error, an inadvertent error or omission, or to clarify an ambiguity in the decision [ss. 307(1), (2), and (4)]. WCAT may complete a decision where a panel has failed to decide an issue.

WCAT has the statutory power to reconsider a decision on the ground of new evidence that meets the requirements of section 310(3). WCAT also has a limited power to cure all or part of a decision if it contains one or more particular types of jurisdictional error. These types of jurisdictional error exist where WCAT had no power to decide a matter, failed to decide a matter that WCAT was required to decide, or was procedurally unfair. [s. 307(5)]

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

20.1 Amendments to Final Decisions

20.1.1 Corrections

A panel may, on request by a party or on the panel's own initiative, amend a final decision to correct any of the following [s. 307(1)]:

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

Panels must issue amendments within 90 days of all parties being served with the final decision, unless the panel determines otherwise [s. 307(2)].

20.1.2 Clarifications

A panel may, on request by a party or on its own initiative, amend a final decision to clarify it [s. 307(2)]

Panels must issue amendments within 90 days of all parties being served with the final decision, unless the panel determines otherwise [s. 307(2)]

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

20.1.3 Incomplete Decision

If a panel fails to address an issue contained in the appeal before it, that it was required to decide, its decision is not complete and the panel may complete its adjudicative function by issuing an addendum to the original decision, either on its own initiative or on request for reconsideration of a party on the basis that the panel has not completed the decision.

If a party alleges that a panel has not completed its decision, the party may apply for reconsideration on the basis that the panel has not completed its decision.

20.2 Reconsideration of Final Decisions

20.2.1 Reconsideration Based on New Evidence (Section 310)

A party to a completed appeal may apply to the chair for reconsideration of a decision if new evidence has become available or been discovered. The chair may refer the decision for reconsideration if the chair is satisfied that the new evidence [s. 310(3)(a) and (b)]:

- a) is substantial and material to the decision. Substantial means that it has weight and supports a different conclusion; material means that it is relevant to the decision; and,
- b) did not exist at the time of the appeal hearing or did exist at that time but was not discovered and could not have been discovered through the exercise of reasonable diligence.

The chair has delegated this authority to vice chairs.

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

20.2.2 Reconsideration to Cure a Jurisdictional Error

Section 307(5) states that provisions regarding amendment of errors or clarification of a decision do not limit WCAT's ability to reopen an appeal to cure a jurisdictional defect on

the request of a party. WCAT calls this process a reconsideration to cure a jurisdictional error. A reconsideration is not an opportunity to re-argue the appeal.

WCAT may reopen its decision to cure a jurisdictional error. There are two types of jurisdictional errors which WCAT has the power to cure: breaches of the duty of procedural fairness and narrow jurisdictional errors. Narrow jurisdictional errors arise where WCAT had no power to decide a matter or WCAT failed to decide a matter that WCAT was required to decide.

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

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

20.2.2.1 Limits on WCAT's Reconsideration Power

The authority to consider an application to cure a jurisdictional error is discretionary in nature.

WCAT cannot change the outcome of a decision on the basis that it is incorrect, unreasonable, or patently unreasonable.

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

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

WCAT has the authority to reconsider a former Appeal Division decision on new evidence grounds [s. 310(1)(b)].

20.2.3 Reconsideration on Both Grounds

As an application for reconsideration to cure a jurisdictional error concerns the validity of the initial decision, such applications should be made soon after the decision is issued. However, new evidence to support an application under section 310 may not arise until a few years after the decision. For that reason, parties may seek reconsideration on both grounds at the same time or separately.

20.2.4 Time Limit

There is no time limit for applying for reconsideration.

20.2.5 One Time Only

A party to a completed appeal may apply for reconsideration of a decision on the basis of new evidence on one occasion only [s. 310(4)].

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

WCAT will hear an application for reconsideration to cure a jurisdictional error on one occasion only regardless of the number of appeals that were administratively joined.

WCAT will not hear a further application for reconsideration of a WCAT decision provided in response to an application for reconsideration.

If, before a decision has been made, a party requests to withdraw the reconsideration application, WCAT has the discretion to accept or deny the withdrawal request. If the request is accepted, the party may reapply at a later date.

Practice Directive

20.3 Reconsideration Applications

Reconsideration applications, whether on the ground of new evidence or jurisdictional error, require WCAT to first determine whether the statutory requirements for reconsideration have been met (i.e. whether the evidence is new and is substantial and material or whether there is a jurisdictional error that is within WCAT's jurisdiction to address). Only if these requirements have been met can WCAT then consider the new evidence or, in the case of a jurisdictional error, rehear all or part of the appeal.

To avoid putting the parties to unnecessary effort and expense, WCAT will often consider the first question separately as stage one in a two stage process. However, where appropriate, both stages of the reconsideration process may be considered at the same time. If this is the case, parties will be advised in advance how WCAT will be proceeding.

A reconsideration based on new evidence may be considered by the original panel or a new panel. A reconsideration based on jurisdictional error (including a breach of procedural fairness) will normally be considered by the original panel.

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

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

20.3.1 Reconsideration not to Proceed

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

20.3.2 Reconsideration to Proceed

- a) *If the objection sets out potential grounds for reconsideration, TCO will advise the applicant that the reconsideration will proceed. TCO will forward the application to the registry which will process the application and invite written submissions from the parties.*
- b) *Once submissions are complete, the reconsideration application will be assigned to a panel for decision about whether there are grounds for reconsideration.*
- c) *If a panel decides that there was a breach of procedural fairness, that WCAT had no power to decide a matter, or that WCAT failed to decide a matter that WCAT was required to decide then the application will proceed to the second stage in which the panel will hear all or part of the appeal afresh. WCAT will decide how the second stage will be conducted (7.1).*
- d) *If a panel decides that there are new evidence grounds for reconsideration, the application will proceed to the second stage in which the panel will reconsider the previous decision on the basis of the new evidence. The second stage panel's decision will only concern the specific issues on which the new evidence grounds were met and whether the new evidence will result in a change to the original decision.*
- e) *WCAT will decide how the second stage of new evidence reconsiderations will be conducted (7.1 and 7.5). The statutory time limit for decision-making does not apply to the second stage of a new evidence reconsideration, however WCAT will nominally apply a 180-day time limit.*

- f) *WCAT will invite respondents to participate in both stages of the reconsideration process.*
- g) *Where a reconsideration application is based on new evidence, requests for reimbursement of expenses will generally be addressed in the second stage of the reconsideration.*

20.4 Judicial Review

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

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

20.4.1 Reconsideration and Judicial Review

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

20.4.2 Time Limit for bringing a Judicial Review

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

20.4.3 Standards of Review

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

- a) patently unreasonable for a finding of fact or law or an exercise of discretion in respect of a matter over which WCAT has exclusive jurisdiction under the privative clause [s. 308 WCA];
- b) fairness in all of the circumstances for questions about the application of common law rules of natural justice and procedural fairness; and,
- c) correctness for all other matters.

A court will consider a discretionary decision to be patently unreasonable if the discretion is exercised arbitrarily or in bad faith, is exercised for an improper purpose, is based entirely or predominantly on irrelevant factors, or fails to take statutory requirements into account [s. 58(3) ATA].

20.4.4 Publication of Judicial Review Decisions

In addition to the court websites, judicial review decisions regarding WCAT decisions are accessible on WCAT's website at www.wcat.bc.ca.

20.5 Effect of Application for Reconsideration or Petition for Judicial Review

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

21 CODES OF CONDUCT

21.1 For Parties

21.1.1 General

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

This Code also applies to any person or representative group WCAT has requested to participate in an appeal under section 297(2)(g)(6.6 to 6.6.7).

21.1.2 Duties of a Party

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

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

- f) The panel assigned to a hearing or pre-hearing process may make orders or give directions necessary for the maintenance of order. If a party disobeys or fails to comply with the panel's order or direction, the panel may:
 - i) call upon a peace officer to enforce the order or direction [s. 48(1) ATA];
 - ii) impose restrictions on the person's continued participation in or attendance at a proceeding [s. 48(3)(a) ATA];
 - iii) exclude the person from further participation in or attendance at a proceeding pending another order [s. 48(3)(b) ATA];
 - iv) apply to court for committal of the person for contempt [s. 49(2)) ATA].

- g) A party has a duty to bring forward, at the earliest opportunity, any information which may give rise to a reasonable apprehension of bias or conflict of interest on the part of a WCAT member. However, such allegations should not be made frivolously or in a fashion which diminishes confidence in the integrity of WCAT decision making. Examples of the types of allegations that will not, on their own, raise a reasonable apprehension of bias include instances where a panel previously decided a similar issue or worked for the Board in the past.
- h) At the earliest practicable opportunity, a party should raise any concern regarding a possible breach of procedural fairness for consideration by the panel hearing an appeal. If the party fails to do so, WCAT may deem them to have waived the right to raise such an objection after the decision has been issued. An application for reconsideration on such a basis might then be denied on the basis of waiver. If the objection is raised, but not accepted by the panel, the party should continue to participate in the hearing. Continued participation will not be interpreted as acquiescence or waiver.
- i) A party must respect the confidentiality of information disclosed during WCAT proceedings and not use that information for other purposes without the consent of the parties and the Board [s. 235(1) WCA].
- j) A party should not attempt to contact a panel directly outside the normal hearing process, unless the panel invites or instructs them to do so. A party who wishes to communicate with a panel should do so through the registry. Due to internet security concerns, a party should not contact WCAT by e-mail except through the email address designated by WCAT for filing forms, documents, and submissions.
- k) Following a WCAT decision, a party must not write to or otherwise contact the panel concerning the decision. Any request for clarification, correction, addendum for a missed issue or reconsideration must be sent to TCO where it will be vetted and channelled appropriately.

21.2 For Representatives

21.2.1 General

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

This Code is intended to alert representatives to the minimum standards of behaviour. Representatives are expected to know and abide by this Code. WCAT will investigate breaches of this Code which are brought to TCO's attention. Panels may also address breaches of this Code directly during the course of oral hearings and/or in their written decisions.

21.2.2 Duties of a Representative

- a) A representative's conduct should at all times be characterized by candour and fairness. The representative should maintain toward WCAT a courteous and respectful attitude and insist on similar conduct on the part of their client, at the same time discharging their duty to their client resolutely and with self-respecting independence.
- b) A representative must honestly represent the client. The representative will not put forward any information known to be untrue, nor will they knowingly assist or encourage a party to be dishonest or misrepresent facts.
- c) A representative must have proper instructions from their client before proceeding. A representative must obtain instructions from their client before taking any significant step including, but not limited to, initiating or withdrawing an appeal.
- d) A representative must meet deadlines for written submissions and for scheduling oral hearings. A representative should not undertake to represent a client unless they will be able to provide such representation within the statutory time frames, as required by section 306.
- e) A representative must be prepared. Being prepared includes being familiar with their client's evidence and position on the appeal, as well as the relevant Board file(s) and the relevant law, policy, and precedent decisions.
- f) A representative must observe WCAT's rules of practice and procedure and practice directives.
- g) A representative must behave courteously and respectfully to the opposing party and their representative (if present), to any witnesses called during an oral hearing, to the panel hearing the appeal, and to WCAT support staff. A representative must also behave courteously and respectfully in written correspondence, including submissions. Respectful behaviour includes representatives conducting their business affairs so as to enable WCAT staff to contact them easily.

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

A representative should instruct their client and witnesses about appropriate conduct in a hearing and in written correspondence, including submissions, and the requirement for courtesy and civility to the panel as well as any opposing representative and their client. A representative is expected to take whatever steps are necessary to dissuade clients and witnesses from disrupting a hearing (21.1).

- h) The panel assigned to a hearing or pre-hearing process may make orders or give directions necessary for the maintenance of order. If a representative disobeys or fails to comply with the panel's order or direction, the panel may:
 - i) call upon a peace officer to enforce the order or direction [s. 48(1) ATA];
 - ii) impose restrictions on a representative's continued participation in or attendance at a proceeding [s. 48(3)(a) ATA];
 - iii) exclude a representative from further participation in or attendance at a proceeding pending another order [s. 48(3)(b) ATA];
 - iv) apply to court for committal of the representative for contempt [s. 49(2)) ATA].
- i) A representative has a duty to bring forward, at the earliest opportunity, any information which may give rise to a reasonable apprehension of bias or conflict of interest on the part of a WCAT member. However, such allegations should not be made frivolously or in a fashion which diminishes confidence in the integrity of WCAT decision making. Accordingly, if the allegation has been addressed by WCAT and rejected, the representative should not continue to raise similar allegations in other appeals. Examples of the types of allegations that will not, on their own, raise a reasonable apprehension of bias include instances where a panel previously decided a similar issue or worked for the Board in the past.
- j) At the earliest practicable opportunity, a representative should raise any concern regarding a possible breach of procedural fairness for consideration by the panel hearing an appeal. If the representative fails to do so, WCAT may deem the party to have waived the right to raise such an objection after the decision has been issued. An application for reconsideration on such a basis might then be denied on the basis of waiver. If the objection is raised, but not accepted by the panel, the party should continue to participate in the hearing. Continued participation will not be interpreted as acquiescence or waiver.
- k) A representative should not engage in personal attacks on members.
- l) A representative must respect the confidentiality of information disclosed during WCAT proceedings and not use that information for other purposes without the consent of the parties and the Board [s. 235(1) WCA].
- m) A representative should not attempt to contact a panel directly outside the normal hearing process, unless the panel invites or instructs them to do so. A representative who wishes to communicate with a panel should do so through the registry. Due to internet security concerns, a representative should not contact WCAT by e-mail.
- n) Following a WCAT decision, a representative must not write to or otherwise contact the panel concerning the decision. Any request for clarification, correction, addendum for a missed issue or reconsideration must be sent to TCO where it will be vetted and channelled appropriately.

- o) Members who cease to hold office, and legal staff of TCO who cease to be employed by or contracted to WCAT, are prohibited from appearing or making written submissions in a proceeding or matter before WCAT as counsel, advocate, or representative on behalf of a party to the proceeding until six months after the member's/legal staff's appointment/employment/contract ends.

21.3 For WCAT Members

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

The Code of Conduct for WCAT Members establishes rules of conduct governing the professional and ethical responsibilities of members to enhance public confidence in their integrity and fairness. The Code establishes reasonable minimum expectations governing the conduct of all WCAT members. Each member must ensure their own compliance with this Code. Members also have an obligation to bring to the attention of another WCAT member any circumstance which raises a reasonable apprehension of that member's possible contravention of this Code.

(Appendix 10)

21.3.1 Involvement in Legal Proceedings

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

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

21.4 For WCAT Employees

Section 282 provides that employees necessary to exercise the powers and perform the duties of WCAT may be appointed under the *Public Service Act*, R.S.B.C. 1996, c. 385. WCAT may also engage or retain consultants or contractors that WCAT considers necessary. All employees, officers, consultants or contractors engaged or retained by WCAT are bound by, and must agree to be bound by, the Province of British Columbia *Standards of Conduct for Public Service Employees*.

Appendix 1

A Short History of the Workers' Compensation Appeal System

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

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

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

The *Workers Compensation Amendment Act (No.2), 2002* restructured the appeal system. The provisions with respect to the MRP were repealed effective November 30, 2002, although proceedings that were before the MRP repeal date will be completed. As of March 3, 2003 the Review Board and the Appeal Division were replaced by WCAT. WCAT inherited 22,446 appeals from the Review Board and the Appeal Division. WCAT eliminated this backlog within three years.

Appendix 2

Rules

Item Number	Item Heading
3.1.6	Application for Reconsideration (20.2.1 and 20.2.2)
4.6	Deceased Worker – Standing of Estate
5.1.1	Notice of Appeal Must Be in Writing
5.1.2	Telephone Notification of Intent to Appeal
5.1.3	Incomplete Notice of Appeal
5.1.3.1	Withdrawal of Incomplete Appeal
5.1.4	Decision or Order Appealed
5.1.5	Outcome Requested
5.2.1	For Representatives to Act (6.3.1)
5.2.2	For WCAT to Obtain Evidence (9.3 to 9.3.3)
5.3.1	Change of Address
6.3.1	Representative Authorizations
7.5	Appeal Method
8.3	Stay of Decision under Section 294
8.5	Withdrawals
12.5.2	Failure to Attend or Obstruction of the Examination
14.1.2	Postponements
14.2.3	Failure to Appear for an Oral Hearing
14.5	Record of the Oral Hearing
18.5.1	Initiating an Application
18.10	Written Submissions and Evidence
18.10.1	Transcripts of Examinations for Discovery

Appendix 3

Practice Directives

The following table sets out the list of WCAT's *Practice Directives*. Click on the item number or the heading to link to the *practice directive* in this document.

Item Number	Item Heading
5.3.2	Returned Mail
6.3.1	Representative Authorizations
8.2.1	Application for Extension of Time
8.2.2	Special Circumstances Precluded
8.2.2.1	Representative Acts or Omissions
8.2.3	Injustice
8.3.1	Application for Stay of Decision
8.4.4	Suspension Pending a Board Decision on a Related Matter under Section 305
10.1	Referral Process
11.6	Expert Evidence
11.7	Orders (Subpoenas) for the Production of Existing Evidence and Attendance of Witnesses
13.1	Filing Submissions
13.1.1	Submission Process
13.1.2	General
13.1.3	Submissions Complete
13.1.4	Late or Unsolicited Submissions
13.2	New Evidence Obtained by the Panel
13.3	Avoidance of Third Party Personal Information and Identifiers (15)
14.1.1	Practice Directive on Scheduling
14.2.3.1	Appellant

Item Number	Item Heading
14.2.3.2	Adequate Reasons
14.2.3.3	No Show Decision
14.2.3.4	Respondent
14.6	Unsolicited Post-Hearing Evidence or Submissions
14.7	New Evidence Obtained by the Panel
16.1.2	Parties' Attendance at Oral Hearings
16.1.2.1	Travel Expenses
16.1.2.2	When the Oral Hearing does not Proceed
16.1.2.3	When the Appellant has Moved
19.2	Writing Decisions Without Identifiers
19.2.1	Confidentiality and Privacy
19.2.2	Names
19.2.3	Representatives
19.2.4	File or Appeal Numbers
19.2.5	Payroll, Revenue Data, and Salary Information
19.2.6	Geographic Locations
19.2.7	Quotations
19.2.8	Corrections or Revisions – Inadvertent Error
19.2.9	Certification to Court
19.2.10	Second Level of Editing in Limited Circumstances
19.2.11	Exception
20.3	Reconsideration Applications
20.3.1	Reconsideration not to Proceed
20.3.2	Reconsideration to Proceed

Appendix 4

Regulations

Workers Compensation Act Appeal Regulation, Order in Council No. 1039/2002
(B.C. Reg. 321/2002)

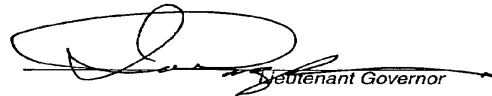
Volume 29 Number 38

Orders in Council and Ministerial Orders

2002

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **1039**, Approved and Ordered **NOV 28 2002**



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2003, the attached regulation is made.



Minister of Skills Development and Labour



Shirley Bond
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Workers Compensation Act, sections 224 (1) and (2), 232 (8), 234 (2), 239 (2) and 249 (1)

Other (specify):-

November 15, 2002

1259 12002/4

WORKERS COMPENSATION ACT APPEAL REGULATION

Interpretation

- 1 In this regulation:
- “Act” means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492;
 - “appeal tribunal” means the Workers’ Compensation Appeal Tribunal established by the Act.

Requirements for appointment

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

Oath of office

- 3 For the purposes of section 232 (8) of the Act, each member of the appeal tribunal must take an oath of office, by oath or solemn affirmation, before a Commissioner for Taking Affidavits in British Columbia, in the following form:

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

Decisions that are not appealable

- 4 For the purposes of section 239 (2) (a) of the Act, the following are classes of decisions that may not be appealed to the appeal tribunal:
- (a) decisions applying time periods specified by the board under section 96 (8) of the Act;
 - (b) decisions made under section 96.2 (4), 96.2 (7), 96.4 (2) to (5) or 96.4 (7) of the Act;

- (c) orders by the chief review officer under section 96.2 (5) of the Act;
- (d) decisions about whether or not to refer a decision back to the board under section 96.4 (8) (b) of the Act;
- (e) decisions respecting the conduct of a review if the review is in respect of any matter that is not appealable to the appeal tribunal under section 239 (2) (b) to (e) of the Act.

Health professionals

- 5 The following are “health professionals”, for the purposes of section 249 (1) of the Act:
- (a) a person who is entitled to practise dentistry or dental surgery under the *Dentists Act*;
 - (b) a person who is entitled to practise dentistry under the laws of another province;
 - (c) a person who is registered as a member of the College of Psychologists of British Columbia established under section 15 (1) of the *Health Professions Act*, R.S.B.C. 1996, c.183;
 - (d) a person who is entitled to practise as a psychologist under the laws of another province.

Costs

- 6 The appeal tribunal may award costs related to an appeal under Part 4 of the Act to a party only if the appeal tribunal determines that
- (a) another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault,
 - (b) the conduct of another party has been vexatious, frivolous or abusive, or
 - (c) there are exceptional circumstances that make it unjust to deprive the successful party of costs.

Expenses

- 7 (1) Subject to subsection (2), the appeal tribunal may order the Board to reimburse a party to an appeal under Part 4 of the Act for any of the following kinds of expenses incurred by that party:
- (a) the expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the appeal tribunal to travel to the hearing or other proceeding;
 - (b) the expenses associated with obtaining or producing evidence submitted to the appeal tribunal;
 - (c) the expenses associated with attending an examination required under section 249 (8) of the Act.
- (2) The appeal tribunal may not order the Board to reimburse a party’s expenses arising from a person representing the party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

TRANSITIONAL REVIEW AND APPEAL REGULATION

Definitions

1 In this regulation:

“Act” means the *Workers Compensation Act*;

“amendment Act” means the *Workers Compensation Amendment Act (No. 2), 2002*;

“appeal division” means the appeal division, as defined in section 79 of the Act, immediately before that definition was repealed by the amendment Act;

“review board” means the review board, as defined in section 1 of the Act, immediately before that definition was repealed by the amendment Act;

“transition date” means the date section 232 (1) of the Act, as enacted by the amendment Act, comes into force.

Unexercised rights

2 (1) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal a decision of the Board to the review board, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chief review officer under section 96.2 (4) of the Act, as enacted by the amendment Act, to extend the time to request a review under that section and the chief review officer may extend the time to file the request for review under that section.

(2) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal

(i) a decision of the Board to the appeal division, or

(ii) a finding of the review board to the appeal division, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chair under section 243 (3) of the Act, as enacted by the amendment Act, to extend the time to file a notice of appeal under that section and the chair may extend the time to file the notice of appeal under that section.

(3) A person who is granted an extension of time to file a request for review or a notice of appeal under subsection (1) or (2) may request a review or appeal the decision or finding, as the case may be, within the extended period.

Transitional Review and Appeal Regulation, Order in Council No. 1040/2002 (B.C. Reg. 322/2002)

Volume 29 Number 38

Orders in Council and Ministerial Orders

2002

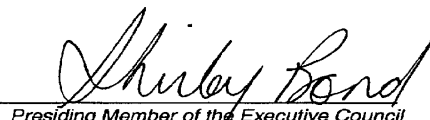
PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **1040**, Approved and Ordered NOV 28 2002


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2003, the attached regulation be made, as the Lieutenant Governor in Council is of the opinion that the matters set out in the attached regulation are insufficiently provided for, or are not provided for, in Part 2 of the *Workers Compensation Amendment Act (No. 2), 2002*, S.B.C. 2002, c. 66, and are necessary for the orderly transition to the appeal tribunal of proceedings before the review board and the appeal division.


Minister of Skills Development and Labour
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Workers Compensation Amendment Act (No. 2), 2002, section 44

Other (specify):- _____

November 18, 2002

1260 12002/4

TRANSITIONAL REVIEW AND APPEAL REGULATION

Definitions

1 In this regulation:

“Act” means the *Workers Compensation Act*;

“amendment Act” means the *Workers Compensation Amendment Act (No. 2), 2002*;

“appeal division” means the appeal division, as defined in section 79 of the Act, immediately before that definition was repealed by the amendment Act;

“review board” means the review board, as defined in section 1 of the Act, immediately before that definition was repealed by the amendment Act;

“transition date” means the date section 232 (1) of the Act, as enacted by the amendment Act, comes into force.

Unexercised rights

2 (1) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal a decision of the Board to the review board, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chief review officer under section 96.2 (4) of the Act, as enacted by the amendment Act, to extend the time to request a review under that section and the chief review officer may extend the time to file the request for review under that section.

(2) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal

(i) a decision of the Board to the appeal division, or

(ii) a finding of the review board to the appeal division, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chair under section 243 (3) of the Act, as enacted by the amendment Act, to extend the time to file a notice of appeal under that section and the chair may extend the time to file the notice of appeal under that section.

(3) A person who is granted an extension of time to file a request for review or a notice of appeal under subsection (1) or (2) may request a review or appeal the decision or finding, as the case may be, within the extended period.

Fishing Industry Regulation, Order in Council No. 1041 (B.C. Reg. 323/2002) and Order in Council No. 1150 (B.C. Reg. 384/2002)

Volume 29 Number 38

Orders in Council and Ministerial Orders

2002

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. — **1041** , Approved and Ordered **NOV 28 2002**


Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2002, section 10 of the Fishing Industry Regulations, B.C. Reg. 674/76, is amended

- (a) in subsection (1) by striking out “, 58 to 66 and 89 to 93 inclusive of Part 1” and substituting “and 96.2 to 96.4 of the Act”,
- (b) in subsection (3) by striking out “58 to 66 and 89 to 93 inclusive of Part 1” and substituting “96.2 to 96.4 of the Act”, and
- (c) by adding the following:
 - (3.1) Sections 96.2 to 96.4 of the Act apply to the persons described in section 5 (1) (a) to (c) as being required to pay assessments.
 - (3.2) The persons to whom sections 96.2 to 96.4 of the Act apply as a result of this section are deemed to be employers for the purposes of those sections.


Minister of Skills Development and Labour
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Workers Compensation Act, section 4

Other (specify):- OIC 3779/76

November 18, 2002

1261 /2002/4

Appendix 5

Standing of an Estate – Statutory Declarations

CANADA)	IN THE MATTER OF
)	
)	_____
)	(Deceased's Name)
PROVINCE OF BRITISH COLUMBIA)	_____
)	(Claim Number)
)	

STATUTORY DECLARATION

(There is No Will)

I, _____, residing at _____
(Full Name) (Address)

_____ SOLEMNLY DECLARE THAT:

I have personal knowledge of the matters set out in this Statutory Declaration.

1. The Deceased, _____, passed away on the _____ of _____, _____
(Deceased's name) (Day) (Month) (Year)
and to the best of my knowledge has no will.
2. I am applying to proceed on behalf of the Deceased's estate to initiate or continue an appeal to the Workers' Compensation Appeal Tribunal (WCAT).
3. I have conduct of the administration of the Deceased's estate as the representative of the estate and if there is any other person who has or may have conduct of the Deceased's estate, I have obtained their consent to initiate or continue an appeal to WCAT on behalf of the estate.
4. I consent to the disclosure of this Statutory Declaration to the Workers' Compensation Board of British Columbia, operating as WorkSafeBC.

Appendix 6

Combined Appeals – Authorization to Release Information

WCAT Workers' Compensation
Appeal Tribunal

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898

TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT):

Please be advised that _____ (representative's name) is representing me and a number of my co-workers in appeals before WCAT with respect to the decision of the Workers' Compensation Board, operating as WorkSafeBC (Board), or the Review Division, dated _____ regarding _____ (issues).

By this authorization I consent to have my appeal dealt with in conjunction with those of my co-workers. I also authorize the release of all information, including evidence, documentation and submissions, which is presented on my behalf or obtained by WCAT, to the other parties involved in these appeals.

I understand that once decisions are issued, WCAT places all documentation pertaining to the appeal on the Board files of all the parties involved in these appeals. To maintain the confidentiality of my personal information, the representative has signed the attached "Documentation Agreement," under which they will provide WCAT with an extra copy of all documentation with my name and personal information blacked out (the Amended Documents). I understand that WCAT will provide the Amended Documents to the Board to form part of the files of the other parties involved in these appeals once the decisions are issued.

NAME (please print)

BOARD CLAIM NUMBER

ADDRESS

WCAT APPEAL NUMBER

CITY

PROVINCE

POSTAL CODE

SIGNATURE

DATE

DOCUMENTATION AGREEMENT

WCAT Workers' Compensation
Appeal Tribunal

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898

TO THE WORKERS' COMPENSATION APPEAL TRIBUNAL (WCAT):

Please be advised that I _____ (representative's name) am representing
_____ (worker's name) and a number of their
co-workers in appeals before WCAT with respect to the decisions of the Workers' Compensation
Board, operating as WorkSafeBC (the Board), or the Review Division, dated
_____ regarding _____
_____ (issue).

By this Agreement I confirm that I will provide WCAT with an extra copy of all the worker's
documentation with their name and personal information blacked out (the Amended Documents).

I understand that once a decision is issued WCAT will provide the Amended Documents to the
Board to form part of the files of the other parties involved in these appeals.

REPRESENTATIVE'S NAME
(please print)

WORKER'S NAME
(please print)

REPRESENTATIVE'S SIGNATURE

WORKER'S BOARD CLAIM NUMBER

DATE

WORKER'S WCAT APPEAL NUMBER

Appendix 7

Orders (to Testify and for the Production of Documents)

WCAT Workers' Compensation
Appeal Tribunal

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898

IN THE MATTER OF the *Administrative Tribunals Act*, S.B.C. 2004 c.45,
and
IN THE MATTER OF the *Workers Compensation Act*, R.S.B.C. 2019 c.1, s. 299(1)
and
IN THE MATTER of an Appeal (or Application [optional for s. 311 or reconsideration])

Appellant (or Applicant):

Respondent:

WCAT Number:

ORDER

To:

Address:

TAKE NOTICE that the Workers' Compensation Appeal Tribunal has been advised that you may have knowledge material to this appeal (or application). You are therefore required to attend to testify as a witness before the Workers' Compensation Appeal Tribunal at the time, date, and place set out below. You are also required to bring with you all documents in your possession or control with regards to *** (and, where applicable, other things):

Time: [Time]
Date: [Month Day, Year]
Place: Workers' Compensation Appeal Tribunal
4600 Jacombs Road
Richmond, BC V6V 3B1

DATED

[NAME], VICE CHAIR

IMPORTANT: NOTICE TO THE WITNESS and NOTICE TO THE PERSON SERVING THE ORDER must be attached and served with this Order.

WCAT Workers' Compensation
Appeal Tribunal

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898

NOTICE TO THE WITNESS:

Take notice that, pursuant to section 299 of the *Workers Compensation Act* and the *Manual of Rules of Practice and Procedure*, WCAT has the same power to enforce your attendance as has a court in civil cases.

If a person fails to comply with an order issued under section 299(1), WCAT may apply to the Supreme Court for an order directing compliance, pursuant to section 299(2) of the *Workers Compensation Act*.

Section 49 of the *Administrative Tribunals Act* states that the failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

- a) attend a hearing;
- b) take an oath or affirmation;
- c) answer questions;
- d) produce the records or things in their custody or possession.

NOTICE TO THE PERSON SERVING THE ORDER:

The proper witness fees must be tendered when the summons is served.

1. For each day or part of a day travelling to and from or attending to give evidence at any hearing: \$20.00
2. Travel allowance, where the hearing is held at a place
 - Within 200 kilometers by road (including any ferry route within the Provincial road system) of where the witness resides, 30 cents per kilometre each way by road between his or her residence and the place of hearing; provided that no travel allowance shall be made if the distance by road between that residence and the place of hearing is less than 8 kilometers. This allowance includes ferry fares and road tolls; and
 - More than 200 kilometers from where the witness resides, the minimum return air fare by scheduled airline plus 30 cents per kilometre each way from his or her residence to the departure airport and from the arrival airport to the place of hearing.
3. A reasonable allowance for meal expenses made necessary by the witness' attendance, and where the witness resides elsewhere than the place of hearing and is required to remain overnight, a reasonable allowance for overnight accommodation.

4. A reasonable sum shall be allowed for the time employed and expenses incurred by the witness in preparing to give testimony when that preparation is necessary.
5. A person served with an order compelling the production of documents is entitled to payment of the reasonable cost of copying and delivery payable in advance by the requesting party.

WCAT Workers' Compensation
Appeal Tribunal

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898

IN THE MATTER OF the *Administrative Tribunals Act*, S.B.C. 2004 c.45,
and
IN THE MATTER the *Workers Compensation Act*, R.S.B.C. 2019 c.1, s. 299(1)
and
IN THE MATTER of an Appeal (or Application for s. 311 or reconsideration)

Appellant (or Applicant):

Respondent:

WCAT Number:

ORDER

To:

Address:

TAKE NOTICE that the Workers' Compensation Appeal Tribunal has been advised that you may have documents (or, where applicable, other things) relevant to this appeal (or application).

THEREFORE the Workers' Compensation Appeal Tribunal requires you to produce the following documents (or, where applicable, other things):

1.

The Workers' Compensation Appeal Tribunal directs you to forward the required documents (or, where applicable, other things) to the following address in person, by courier or by mail postmarked no later than [month day, year]:

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

DATED

[NAME], VICE CHAIR

IMPORTANT: NOTICE TO THE RECIPIENT and NOTICE TO THE PERSON SERVING THE ORDER must be attached and served with this Order.

WCAT Workers' Compensation
Appeal Tribunal

150 – 4600 Jacombs Road
Richmond, BC V6V 3B1
Telephone: (604) 664-7800
Toll Free: 1-800-663-2782
Fax: (604) 664-7898

NOTICE TO THE RECIPIENT:

Take notice that, pursuant to section 299 of the *Workers Compensation Act* and the *Manual of Rules of Practice and Procedure*, WCAT has the same power to enforce the production and inspection of books, papers, documents and things as has a court in civil cases.

If a person fails to comply with an order issued under section 299(1), WCAT may apply to the Supreme Court for an order directing compliance, pursuant to section 299(2) of the *Workers Compensation Act*.

NOTICE TO THE PERSON SERVING THE ORDER:

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

Appendix 8

Oaths and Affirmations

Oath/Affirmation of Witnesses

You are about to give evidence to the Workers' Compensation Appeal Tribunal. WCAT is dependent on you telling us the truth and the law requires you to do so. Therefore, before you testify, I must ask you this:

Oath

1. Do you swear that the evidence you will give in these proceedings shall be the truth, the whole truth, and nothing but the truth, so help you God?

Answer: I Do or I So Swear.

Affirmations

1. Do you affirm that the evidence that you will give in these proceedings shall be the truth, the whole truth and nothing but the truth?

Answer: I Do or I So Affirm.

2. Do you solemnly promise that the evidence that you are about to give will be the truth, the whole truth and nothing but the truth?

Answer: I So Promise

And, do you understand that a breach of your oath/affirmation/promise would be an offence under our law?

Answer: I Do

Oath/Affirmation of Interpreters

Oath

Will you truly, faithfully, and without partiality to any party in this proceeding, and to the best of your ability interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers, so help you God?

Answer: I Do or I So Swear.

Affirmation

Do you affirm that you will truly, faithfully, and without partiality to any party in this proceeding, and to the best of your ability interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers?

Answer: I Do or I So Affirm.

Appendix 9

Current Fee Schedules

Please click [here](#) to see the current fee schedule.

Appendix 10

Code of Conduct for WCAT Members

1 General

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

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

1.1 Oath of Office

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

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

1.2 Decision Making Responsibilities

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

Members will not decline to follow an applicable policy on the basis that it is unlawful, except in accordance with section 304. Members will not decline to follow an applicable decision of a precedent panel appointed under section 285(6), except in accordance with section 303(3). Members will respect and apply the provisions of sections 250(3) and 304, just as a court would consider a decision of a higher court as binding. Even if the member

would have decided the issue differently, the member will respect and apply binding authority as provided in the WCA.

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

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

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

1.3 Confidentiality

As a result of their duties, members acquire confidential information. In accordance with section 314 of the WCA and section 30 of the ATA, members must not disclose to anyone such confidential information except as may be necessary to discharge their obligations under Part 7 of the WCA or when required by law or authorized under FIPPA (15.1).

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

1.3.1 Protection of Privacy outside WCAT's Offices

Practice Directive

Members will comply with these guidelines to protect the privacy and security of confidential records. This practice directive applies to members' handling of documents, files, and electronic files and information where these are taken outside the WCAT offices (for attending hearings or working at home):

- (a) log in and log out files using procedures outlined by WCAT;*
- (b) transport files in a locked carrying case and, if possible, keep them with the member at all times;*
- (c) if it is necessary to review the files while travelling, ensure that they are not in open view;*

- (d) *always store files in a locked carrying case, locked filing cabinet, or locked room, to ensure they cannot be viewed by visitors or family members;*
- (e) *do not leave files unattended in unlocked premises (whether at home or in a hotel);*
- (f) *do not leave files in a vehicle, even if it is locked. If absolutely necessary, files may be locked in a trunk if the vehicle is parked in a secure location;*
- (g) *do not leave electronic information, database materials, and related electronic file information unattended or in an area where they can be viewed by visitors, family members and other unauthorized individuals;*
- (h) *follow all security policies and practices established for computerized systems;*
- (i) *do not take files outside of Canada;*
- (j) *return files to the WCAT offices as soon as possible.*

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

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

2 Conduct

2.1 General

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

2.2 Collegial Responsibilities

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

Members will foster a collegial approach in performing their adjudicative functions and exchange views, information, and opinions in a spirit of respect for the independence of

each other as decision makers. A member will not publicly comment, orally or in writing, on any matter before WCAT, or on a colleague's conduct, and shall not divulge confidential information unless legally required or appropriately authorized to do so.

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

2.3 Skills and Training

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

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

2.4 Personal Relationships between Members

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

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

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

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

2.5 Use of WCAT Assets

Members must not use WCAT assets, internet facilities, space or time for any non-WCAT purpose without the prior authorization of the chair or a senior vice chair. The member must comply with all applicable laws and regulations and must respect the legal protection provided by copyright and licenses with respect to both programs and data.

Internet users are responsible for ensuring that their use of Internet access is appropriate and consistent with ethical conduct under the current applicable policy. This policy does

not prohibit members from making or receiving occasional brief electronic messages or private telephone calls.

2.6 Accepting Gifts

Members must not directly or indirectly ask for or accept a gift, favour, service, or promise of future benefit from any individual or organization who appears before WCAT.

This provision is not intended to prohibit the normal presentation of gifts to persons participating in public functions, or the normal exchange of gifts between friends that does not amount to a real or apparent conflict of interest, or does not otherwise call into question the member's objectivity and impartiality. This provision is also not intended to prohibit infrequent attendance at lunches, dinners, or public events of a common and reasonable nature in the company of an individual or representative of an organization which regularly appears before WCAT.

If there is any doubt regarding the propriety of accepting a gift or accepting an invitation to attend an event, the member should consult with the chair.

2.7 Outside Activities

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

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

Members will not introduce partisan politics at the local, provincial, or national levels into the workplace. This does not apply to informal private discussions among co-workers.

2.8 Outside Remunerative and Volunteer Work

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

- (a) interfere with the performance of their duties as a member of WCAT;

- (b) bring WCAT or the government into disrepute;
- (c) represent a conflict of interest or create the reasonable apprehension of a conflict of interest;
- (d) appear to be an official act or to represent WCAT or government opinion or policy;
- (e) involve the unauthorized use of work time or government premises, services, equipment, or supplies to which they have access by virtue of their employment;
- (f) gain an advantage that is derived from their employment as a member of WCAT; or,
- (g) result in payment while the member is in receipt of short term and/or long term disability plan payments.

2.9 Reporting and Consequences

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

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

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

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

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

3 Termination of Appointments

WCAT appointments may be terminated without notice on payment of the lesser of 12 months' compensation or remuneration owing to the end of a member's term. This change is deemed to be included in all contracts of employment related to appointments

that are commenced, changed or renewed on or after May 28, 2003 [s. 14.9, *Public Sector Employers Act*, RSBC 1996, c. 384]. This provision does not apply to termination of appointment(s) for cause.

4 Obligations after Ceasing to be a Member

Members who cease to hold office continue to be bound by the obligations of confidentiality in respect of any matter arising while they were a member. Members who cease to hold office may not take improper advantage of their former office.

Members who cease to hold office are prohibited from appearing or making written submissions in a proceeding or matter before WCAT as counsel, advocate, or representative on behalf of a party to the proceeding or matter until six months after the member's appointment ends.