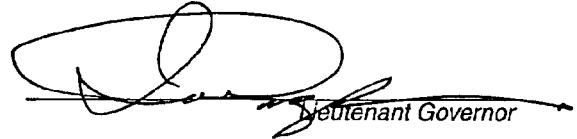




PROVINCE OF BRITISH COLUMBIA  
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **1039**, Approved and Ordered **NOV 28 2002**

  
Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective March 3, 2003, the attached regulation is made.

  
Minister of Skills Development and Labour  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

Authority under which Order is made:

Act and section:- Workers Compensation Act, sections 224 (1) and (2), 232 (8), 234 (2), 239 (2) and 249 (1)

Other (specify):- \_\_\_\_\_

November 15, 2002

1259 12002/4

## WORKERS COMPENSATION ACT APPEAL REGULATION

### Interpretation

1 In this regulation:

“Act” means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492;

“**appeal tribunal**” means the Workers’ Compensation Appeal Tribunal established by the Act.

### Requirements for appointment

2 The chair may appoint a person as a vice chair of the appeal tribunal only if the person demonstrates the following:

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

### Oath of office

3 For the purposes of section 232 (8) of the Act, each member of the appeal tribunal must take an oath of office, by oath or solemn affirmation, before a Commissioner for Taking Affidavits in British Columbia, in the following form:

I, ....., swear (solemnly affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, carry out my duties as a member of the Workers’ Compensation Appeal Tribunal, I will conduct myself with integrity, and I will discharge my duties in accordance with the laws of the Province.

### Decisions that are not appealable

4 For the purposes of section 239 (2) (a) of the Act, the following are classes of decisions that may not be appealed to the appeal tribunal:

- (a) decisions applying time periods specified by the board under section 96 (8) of the Act;
- (b) decisions made under section 96.2 (4), 96.2 (7), 96.4 (2) to (5) or 96.4 (7) of the Act;

- (c) orders by the chief review officer under section 96.2 (5) of the Act;
- (d) decisions about whether or not to refer a decision back to the board under section 96.4 (8) (b) of the Act;
- (e) decisions respecting the conduct of a review if the review is in respect of any matter that is not appealable to the appeal tribunal under section 239 (2) (b) to (e) of the Act.

**Health professionals**

- 5 The following are "health professionals", for the purposes of section 249 (1) of the Act:
- (a) a person who is entitled to practise dentistry or dental surgery under the *Dentists Act*;
  - (b) a person who is entitled to practise dentistry under the laws of another province;
  - (c) a person who is registered as a member of the College of Psychologists of British Columbia established under section 15 (1) of the *Health Professions Act*, R.S.B.C. 1996, c.183;
  - (d) a person who is entitled to practise as a psychologist under the laws of another province.

**Costs**

- 6 The appeal tribunal may award costs related to an appeal under Part 4 of the Act to a party only if the appeal tribunal determines that
- (a) another party caused costs to be incurred without reasonable cause, or caused costs to be wasted through delay, neglect or some other fault,
  - (b) the conduct of another party has been vexatious, frivolous or abusive, or
  - (c) there are exceptional circumstances that make it unjust to deprive the successful party of costs.

**Expenses**

- 7 (1) Subject to subsection (2), the appeal tribunal may order the Board to reimburse a party to an appeal under Part 4 of the Act for any of the following kinds of expenses incurred by that party:
- (a) the expenses associated with attending an oral hearing or otherwise participating in a proceeding, if the party is required by the appeal tribunal to travel to the hearing or other proceeding;
  - (b) the expenses associated with obtaining or producing evidence submitted to the appeal tribunal;
  - (c) the expenses associated with attending an examination required under section 249 (8) of the Act.
- (2) The appeal tribunal may not order the Board to reimburse a party's expenses arising from a person representing the party or the attendance of a representative of the party at a hearing or other proceeding related to the appeal.

## TRANSITIONAL REVIEW AND APPEAL REGULATION

### Definitions

1 In this regulation:

“Act” means the *Workers Compensation Act*;

“amendment Act” means the *Workers Compensation Amendment Act (No. 2), 2002*;

“appeal division” means the appeal division, as defined in section 79 of the Act, immediately before that definition was repealed by the amendment Act;

“review board” means the review board, as defined in section 1 of the Act, immediately before that definition was repealed by the amendment Act;

“transition date” means the date section 232 (1) of the Act, as enacted by the amendment Act, comes into force.

### Unexercised rights

2 (1) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal a decision of the Board to the review board, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chief review officer under section 96.2 (4) of the Act, as enacted by the amendment Act, to extend the time to request a review under that section and the chief review officer may extend the time to file the request for review under that section.

(2) If, before the transition date,

(a) a person has not exercised a right under the Act to appeal

(i) a decision of the Board to the appeal division, or

(ii) a finding of the review board to the appeal division, and

(b) the time period within which the person must exercise that right has expired, the person may apply to the chair under section 243 (3) of the Act, as enacted by the amendment Act, to extend the time to file a notice of appeal under that section and the chair may extend the time to file the notice of appeal under that section.

(3) A person who is granted an extension of time to file a request for review or a notice of appeal under subsection (1) or (2) may request a review or appeal the decision or finding, as the case may be, within the extended period.