APPEALS SERVICES DIVISION
PRACTICE & PROCEDURES

APPEALS SERVICES DIVISION

Fax: 416-344-3600

Phone: 416-344-1014

Toll-free: 1-800-387-0773

TTY: 1-800-387-0050

Website: wsib.on.ca

Effective January 1, 2018

KEY CHANGES TO THE ASD PRACTICE & PROCEDURES

Effective January 1, 2018

This procedural document is reviewed and updated, typically on an annual basis. The updated document will remain in effect until the date of the next review. In this version, dated January 1, 2018, we have updated information about Objection Intake, further clarified how the decisions regarding methods of resolution are made, and have begun to make improvements in the overall language of the document. For previous changes made to the Practice and Procedures document, **SEE APPENDIX B on page 64.**

Issue	Description	Page(s)
Objection Intake	The process for objection intake has been updated and now includes a review by the decision maker's manager.	**6**
Methods of Resolution and Criteria for Hearings in Writing vs. Oral Hearings	The information in this practice guideline was re-organized to provide a better flow of process, further clarification around how determining method of resolution is done, and additional criteria and examples for the factors taken into account. The ASD will use this new guideline effective January 1, 2018. Traumatic Mental Stress (TMS) was removed from the Oral hearings list "B" on page 22. Complex non-organic conditions on this list are meant to include TMS and Chronic Mental Stress.	**17-22**
Reconsiderations in the Appeals Services Division	This guideline was updated to clarify that when a de novo decision is needed, the timelines associated with the appeals process will apply.	**52-55**

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Glossary of Acronyms

The following items will be described throughout this document using the acronyms/terms set out below:

WSIB Workplace Safety and Insurance Board

WSIA Workplace Safety and Insurance Act

WSIAT Workplace Safety and Insurance Appeals Tribunal

ASD Appeals Services Division

ARO Appeals Resolution Officer

Registrar Appeals Registrar

Coordinator Appeals Coordinator

WPP Workplace Party(ies)

Definition of Terms

Workplace party(ies)	The worker who has a wsib claim and the employer for that worker.
Front-line decision maker	This is the individual that made the initial decision on an issue of entitlement or related to an employer account.
Appeals Resolution Officer	The final decision maker of the WSIB.
Appeals Registrar	The primary contact for workplace parties and their representatives. Unrepresented workers and employers will have greater opportunity to discuss the appeals process with the appeals registrar at the beginning of the process. This role is responsible for reviewing the readiness of the appeal, making determinations on the appropriate appeal method of resolution, addressing disclosure issues, and making time limit decisions.
Appeals Coordinator	This role is responsible for all pre hearing activities of a file prior to assignment to an aro, and for scheduling oral hearings as required.
Objection	When a WPP receives a decision that they disagree with they may advise the front-line decision maker that they wish to object to that decision.
Intent to Object Form	This is a form available on the wsib website that allows the WPP to provide new information that might alter a decision by the front-line decision maker as well as to bookmark their objection within the time required by the workplace safety and insurance act. To bookmark an objection is to indicate disagreement with a decision made by a front-line decision maker; if it is done within the time frame required by the workplace safety and insurance act the WPP can move forward with their objection whenever they are ready to do so.
Objecting Party	The WPP or representative who disagrees with the decision made by the front-line decision maker and initiates an objection (appeal) to a wsib decision.
Appeal Readiness Form	The form that the WPP can complete and send to the wsib. It allows the parties to make their argument about their appeal and indicate their opinion on how the appeal should be resolved.

Respondent Form	The form that a participant (non-objecting party) completes to respond to the objecting party's argument about the appeal, and to indicate their opinion on how their appeal should be resolved.
Appeal	The process that occurs when a WPP has completed an intent to object form, an appeal readiness form and the file is registered in the appeals services division to resolve.
Participant	The WPP who has completed a participant form and wishes to participate in the appeal of the objecting party.
Respondent	The participant becomes the respondent for the purposes of the appeals process; they are responding to the arguments/testimony made by the objecting party.
Hearing in Writing	An appeal resolved by an aro based on the evidence found in the claim file and the appeal readiness form and respondent form.
Oral Hearing	The appeal participants attend a wsib office and appear in person (or by teleconference) before the aro. The worker and witnesses, and employer if participating, answer questions under oath and oral arguments are made by the participants.
Employer Account Appeals	Those appeals dealing with classification, transfer of cost, independent operator and worker status, or other revenue related issues.

Calculation of Time

Time in this document, unless otherwise noted, is delineated in calendar days. When a due date falls on a weekend or a holiday, the due date will be extended to the next weekday or the next day that is not a holiday.

Mission Statement

The mission of the Workplace Safety and Insurance Board (WSIB) appeals system is to consider and reach final resolutions to claims and employer account appeals. Resolutions shall be consistent with the Workplace Safety and Insurance Act (WSIA) and WSIB policy, and shall be timely, transparent and fair in dealing with appeals from both workers and employers.

The Appeals Services Division (ASD) will ensure service excellence by demonstrating a responsive appeals system that is committed to providing independent and transparent decision-making services by one independent decision maker (ARO). The ASD will provide two resolution methods, hearings in writing and oral hearings.

Oral hearings, when requested and found necessary by the ASD, are held at locations throughout Ontario to ensure the Workplace Parties (WPP), their representatives, and any relevant witnesses are not unduly inconvenienced or the location of the hearing does not form a barrier to a party's right to a fair and timely appeals process.

Statutory Authority

Section 119 of the WSIA states:

- *The Board shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.*
- *If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for and against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.*
- *The Board shall give an opportunity for a hearing.*
- *The Board may conduct hearings orally, electronically or in writing.*

Section 131(1) of the WSIA states:

The Board shall determine its own practice and procedure in relation to applications, proceedings and mediation. With the approval of the Lieutenant Governor in Council, the Board may make rules governing its practice and procedure.

ASD Practice and Procedures

The ASD has exercised its powers under s.131(1) to adopt the following document. The Appeals Services Division Practice & Procedures document is available on the WSIB website: www.wsib.on.ca.

For specific information regarding employer account appeals, **SEE PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on page 61.**

This procedural document is reviewed and updated, typically on an annual basis. The updated document will remain in effect until the date of next review.

Key changes in this version are outlined at the beginning of the document.

PRACTICE GUIDELINE: Intent to Object – Handling By Operations

Adverse Decision

When a front-line decision maker makes an adverse decision, they will communicate that decision verbally when possible and in writing. A written decision will invite the WPP that has received the adverse decision to provide any additional information that might alter the decision, and will also advise the party of the time limit to object to the decision. **SEE PRACTICE GUIDELINE on TIME LIMIT TO OBJECT on page 7.**

If concerns are raised about the decision, the decision maker will review the concerns with the party, explain the rationale for the decision and address/review any new information that may be provided. If the decision is not changed, the party can then proceed with their objection.

Intent to Object and Possible Reconsideration

If the objection is to an Employer Account issue, **SEE PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on page 61.**

For all other issues, the party/representative is required to obtain a blank Intent to Object Form from the WSIB website (www.wsib.on.ca), through the mail, or, upon request, by calling the WSIB at 416-344-1000 or 1-800-387-0750.

This form is intended to give parties an early opportunity to provide new information that might alter a decision by the front-line decision maker as well as to bookmark their objection. To bookmark an objection is to indicate disagreement with a front-line decision within the time limit set out in the WSIA.

The form requires the following information to be provided:

- Claim identifiers (worker name and claim number)
- Identification of the objecting party
- General information about the objecting party
- Representative contact information
- Date of decision(s) being objected to and the issues in dispute contained in the decision letters
- Indication of whether there is new information or additional explanation provided
- Signature and date

The form is structured so that only the first page must be returned; page 2 is optional and may be completed if the party has new information or would like to provide reasons for the objection.

The completed Intent to Object Form must be mailed/faxed to the WSIB within the Section 120 specified time limit to object. **SEE THE PRACTICE GUIDELINE ON TIME LIMIT TO OBJECT on page 7.**

While the WSIB prefers to receive the Intent to Object Form, it will continue to accept a letter of objection.

Reconsideration Stage in Operations

If the objecting party returns a completed Intent to Object Form, the original Operations decision maker will review the form for completeness and any new information that is provided. Where appropriate, the decision maker will reconsider the original decision. Where new issues are raised in the Intent to Object Form, the

decision maker will address those issues as well. The reconsideration process will generally take place within 14 days, or longer, if additional information must be obtained.

If the decision is altered, the objection process will not continue.

If the adverse decision is confirmed, a reconsideration letter is sent. The reconsideration letter should include the same information as the original decision, except without the inclusion of a time limit to object paragraph. The file is then referred to the Access Department.

Access

For a claim objection, the Access Department will provide the party/representative with access to the file record (in accordance with established WSIB policy) along with an Appeal Readiness Form and instruction sheet. An appeal will not proceed until all access issues have been resolved either through consent or by order of the WSIB or by WSIAT (on appeal). The non-objecting party will be sent a Participant Form. The non-objecting party will not be provided with access to the file record at this time. Access will be provided at a later time (i.e., once the Appeal Readiness Form is received). The non-objecting party (the Respondent) will be provided with a Respondent Form (along with access to the file record) and will be granted 45 days (plus 5 days for mailing) to complete and submit the form.

In the case of an employer account objection, access to the firm file is not provided automatically, but the employer/representative is given the opportunity to obtain access if they choose, through the firm file access area. The contents of a firm file are comprised primarily of correspondence between the WSIB and the employer, which makes the need for access to that information less likely.

For transfer of cost employers, (an employer, not the accident employer, who has been charged all or part of the claims costs due to the negligence of one of their employees), access is given to enable effective participation in the decision-making process. Access to transfer of cost employers is provided in the same manner as regular employers, except the worker can object to the disclosure of any information in the claim file, not just health care information.

Appeal Readiness Form

If the objecting party has completed and returned Intent to Object Form to the WSIB, there is no time limit attached to the completion of an Appeal Readiness Form.

If the objecting party has additional information relevant to the issue or is of the view the matter could be considered under another policy, and neither has been considered by the Operations decision maker, they should provide that information/argument to the original decision maker to consider. Only when all issues have been fully considered in Operations should the objecting party advance their appeal to the ASD by submitting an Appeal Readiness Form.

When the objecting party has gathered all of the information related to their appeal, has resolved any issues with access to medical file copies and is available to attend an oral hearing within 90 days if that is the method of resolution they have requested, they should complete the Appeal Readiness Form and fax or mail it to the WSIB. The objecting party may attach a written submission with the Appeal Readiness Form to further support their appeal.

Objection Intake

The Objection Intake Team (OIT) will receive and track the Appeal Readiness Form and review it for administrative completeness. OIT will then refer all Appeal Readiness Forms to the originating decision maker's manager for review of the decision and approval to proceed with referral to ASD.

In cases where the decision maker's manager has determined that the file is not appeal ready due to gaps in the file record or when new information has been provided, they will communicate this to the parties and will ensure that reconsiderations, where warranted, are completed in a timely manner.

When OIT is notified the appeal is ready to proceed, they will complete an Appeals Referral Form and will send the file to the ASD. The objecting and participating party (respondent) will be sent a letter advising of the referral.

PRACTICE GUIDELINE: Time Limit to Object

Overview

Section 120 of the WSIA establishes time limits to object to Board decisions. There is a 30-day time limit to object to a WSIB decision about Return to Work, Re-employment, or a Labour Market Re-entry (now work reintegration) plan made on or after January 1, 1998. There is a six-month time limit to object to any other WSIB decision made on or after January 1, 1998, including employer account decisions.

The WSIB will default to the 6 month time limit in a situation where a party is objecting to two different decisions with two different time limits (e.g., work transition (WT) issue with a 30 day time limit and a loss of earnings (LOE) issue with a time limit of 6 months).

Completing the Intent to Object Form

When the WSIB issues a decision, the WPP must be advised in a decision letter of the applicable time limits for objecting. In order to meet the Section 120 statutory requirements, the WSIB must receive a completed Intent to Object Form, or a letter of objection, by the time limit date set out in the decision letter.

If the party or parties do not confirm a desire to proceed, no further action will be taken.

If the case is brought forward for review after the appeal time limit has expired, the WSIB has the authority to extend the time limit in appropriate cases. Requests for extensions will be considered by decision makers who will notify the party in writing of the outcome of the review.

Appealing Time Limit Rulings

If the party or parties indicate a desire to appeal the time limit ruling, the matter will be referred by the Manager in Operations directly to a Manager in the ASD for priority assignment to a Registrar.

The completion of an Intent to Object Form on the time limit to appeal issue is not required, but both parties must be notified of the referral. The Operations decision maker has to complete an Appeals Referral Memo and place it on the file. Once the time limit appeal has been received in the ASD, the Coordinator will send/fax a letter to the objecting party giving 30 days (plus 5 days for mailing) to send in a submission on the issue.

The Registrar will rule on the time limit issue within 30 days of receiving submissions from the parties.

Criteria for Extending Time Limit to Object

Criteria to be considered for objections beyond the statutory time limit include:

- Whether there was actual notice of the time limit. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
- Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
- An organic or non-organic condition that prevents the worker from understanding the time limit and/or meeting the time limit;
- Whether there is clear documentation in the claim file that the party was disputing the issue(s) in a particular decision even though a formal notice of objection was not filed (direct correspondence or memo outlining a telephone discussion about the particular issue);

- Whether there are other issues in the appeal that were appealed within the time limit which are so intertwined that the issue being objected to within the time limit cannot reasonably be addressed without waiving the time limit to appeal on the closely related issue.

If the extension is granted, the file will be returned to Operations and the usual access/Appeal Readiness Form process will be initiated for the substantive issue. **See PRACTICE GUIDELINE on INTENT TO OBJECT – HANDLING BY OPERATIONS on page 4.**

NOTE: the criteria related to the extension of the time limit to object that were in place at the time of the operating area decision on the time limit, should be applied. Appendix A includes the criteria and relevant time frames associated with those criteria.

PRACTICE GUIDELINE: Role of the ARO

All appeals accepted by the ASD are dealt with by AROs, with the exception of time limit appeals.* Outcomes are reached using one of two resolution methods, Hearing in Writing or Oral Hearing, which are determined by the nature of the issue under appeal. The method of resolution will be determined by the Registrar.** In the case of an employer account appeal, the method of resolution will be determined by an ARO.

AROs are responsible for resolving appeals. In performing their duties, AROs shall comply with the following code of conduct:

- Act in a fair and impartial manner and avoid any conflicts of interest.
- Be diligent and conscientious in the performance of their duties.
- Treat all parties and participants in the appeal process with courtesy, dignity and respect.
- Approach every appeal with an open mind, capable of fairly assessing and weighing evidence and avoid doing or saying anything that would cause a well-informed reasonable party to think otherwise.
- Conduct such enquiries as may be necessary to properly resolve an appeal, and to ensure appropriate protection for unrepresented parties, while respecting the non-adversarial nature of the WSIB's adjudication system.
- Reach conclusions based on objective and independent assessments of fact in accordance with the WSIA and WSIB policy.

*Time limit appeals will be dealt with by the Appeals Registrar. **SEE THE PRACTICE GUIDELINE on TIME LIMIT TO OBJECT on page 7.**

**** SEE PRACTICE GUIDELINE on ROLE OF APPEALS COORDINATOR AND APPEALS REGISTRAR on page 24.**

PRACTICE GUIDELINE: Appeal Participants

Objecting Party

The objecting party is the WPP or representative who disagrees with the decision made by the front-line decision maker and initiates an objection (appeal) to a WSIB decision.

Non-objecting Party (Respondent)

The non-objecting party is also a participant in the proceeding where they have confirmed on the Participant Form that they intend to participate. In the context of the appeals process the non-objecting party becomes the Respondent.

It is important that the Participant Form is completed and returned as soon as possible to ensure inclusion in the appeal process if the objecting party moves ahead quickly.

Where the non-objecting party has chosen not to participate on the Participant Form or does not return the Participant Form to the Appeals Services Division, there is no obligation to include that party in any of the proceedings; however, the party will be sent a copy of the decision, or agreement that is reached at the conclusion of the proceeding.

Third parties may be included in certain circumstances (e.g., successor employers or multiple workplace exposures involving more than one employer). When an employer is no longer in business and their WSIB account has been closed, they will generally not be included as a participant in the appeal proceeding. AROs may still request information from the former officers or employees of the company where such information is necessary to determine the merits of the appeal.

PRACTICE GUIDELINE: Representatives

Right to Representation

All parties have a right to be represented by a representative of their choice.

Both claim file and employer information can only be released to worker and employer representatives if such representatives/parties have given the WSIB written authorization. Please visit the WSIB website at www.wsib.on.ca and use our search bars to download the following forms:

Direction of Authorization
Employer's Direction of Authorization

Licensing Requirements

In order to provide legal services related to WSIB matters, representatives must have a license required and issued by the Law Society of Upper Canada (LSUC). The only exceptions are those persons who are exempt from the licensing requirements either under the *Law Society Act* or pursuant to a bylaw passed by the Law Society of Upper Canada.

The WSIB will not accept unlicensed representatives who are not otherwise exempt from the licensing requirement. A common exemption is that of a friend, which the LSUC describes as a person not in the business of providing legal services that occasionally provides assistance to someone for no fee.

Additional information on licensing requirements is available on the WSIB website: www.wsib.on.ca, and on the Law Society of Upper Canada website: www.lsuc.on.ca.

Requests for Representation

The WSIB does not require WPPs have a lawyer or a representative to have an appeal considered in the ASD. If the WPPs have a representative, the WSIB needs their current contact information.

If WPPs plan to have a representative to handle their appeal, they are not ready to proceed to the ASD until the WSIB has received a *Direction of Authorization* in the claim, AND the representative is also ready to proceed with the appeal.

Appeal proceedings will not be suspended in order for an objecting party or respondent to obtain representation. **SEE PRACTICE GUIDELINE on LATE REPRESENTATION AND PARTICIPATION on page 13.**

Please see the Intent to Object Form instruction sheets for information regarding organizations that provide free advice and representation.

PRACTICE GUIDELINE: Code of Conduct for Representatives

Representatives are expected to make good faith attempts to resolve issues in dispute at the Operations level and to be prepared and ready to proceed once an appeal is registered in the ASD.

The ASD recognizes and enforces the Code of Conduct established by the WSIB for representatives. The WSIB Code of Conduct can be found on the WSIB's website at www.wsib.on.ca.

ASD Code of Conduct for Representatives

As there is greater interaction with representatives at the ASD level, more details about the expected standard of behavior have been developed. Representatives at the ASD level are expected to:

- Be aware of and comply with the *Appeals Services Division Practice & Procedures* document;
- Be prepared to comply with the disclosure requirements set out in the *Appeals Services Division Practice & Procedures* document;
- Be courteous and respectful to the opposing party, witnesses, and ASD staff;
- Respect the confidentiality of the file information and related information submitted in the appeals process;
- Respect the privacy of the individuals involved in the appeals process;
- Provide submissions/responses by date required/requested; and
- Be on time when attending oral hearings.

Please also see the Law Society of Upper Canada *Rules of Professional Conduct* at www.lsuc.on.ca.

PRACTICE GUIDELINE: Late Representation and Participation

General

Appeal Readiness Form material makes clear to objecting parties that they should not be completing this form if they are seeking representation. The Participant Form provides a timeline for non-objecting parties to declare their interest in participating. Therefore, the ASD expects that late notice of representation and/or participation will be rare.

The ASD may grant a reasonable pause in appeal proceedings in cases of late notice of representation and/or participation in the circumstances set out below.

Late Participation

Hearing in Writing

- Once a hearing in writing appeal has been assigned to an ARO, the appeal will not be delayed (paused) due to notification of late participation.
- If the case has not yet been assigned to an ARO to complete a hearing in writing, the appeal may be paused for up to 30 days from the date of notification of participation by the respondent and the respondent must provide their written submission within those 30 days.

Oral Hearing

- If the case has not yet been assigned to an ARO because an oral hearing date has not been set, scheduling of the appeal may be paused for up to 30 days; the respondent must then be prepared to be available to attend an oral hearing within 90 days.
- If an oral hearing date has been scheduled, and the respondent provides notice of late participation, they will be allowed to participate in the appeal but must accept the oral hearing date that has been set and will not be permitted to add any issues to the hearing agenda.

Late Representation or Late Change in Representation

Hearing in Writing

- Once a hearing in writing appeal has been assigned to an ARO, the appeal will not be delayed (paused) due to notification of late representation.
- If the case has not yet been assigned to an ARO to complete a hearing in writing, the appeal may be paused for up to 30 days from the date of notification that either the objecting party or respondent have obtained representation or needed to change their representation. Both parties must provide their written submission within the further 30 days after the clock has restarted. The objecting party may also choose to withdraw the appeal, in which case the withdrawal consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50** will apply.

Oral Hearing

- If the case has not yet been assigned to an ARO because an oral hearing date has not been set, scheduling of the appeal may be paused for up to 30 days; both parties must then be available to attend an oral hearing within 90 days of the date of subsequent contact by the Appeals Coordinator. The objecting party may also choose to withdraw the appeal, in which case the withdrawal consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50** will apply.

- If an oral hearing date has been set and it is the objecting party who has obtained new representation the oral hearing may be postponed for a maximum of 30 days; if a hearing date cannot be established (agreement of objecting party and respondent) within the extra 30 days the appeal will be withdrawn from active status in the ASD and the withdrawal consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50** will apply.
- If an oral hearing date has been scheduled, and it is the respondent who has obtained new representation, the oral hearing may be postponed for a maximum of 30 days; if a hearing date cannot be established within the extra 30 days (agreement of objecting party and respondent) the oral hearing will proceed on the originally scheduled date.

This pause in proceedings will allow for file record access to be provided to the new representative or participants.

Requests from a late participant or new representative regarding witnesses or the provision of new documentary evidence will be authorized by the Registrar if the file has yet to be assigned to an ARO and by the ARO if the file has been assigned, if:

- The Registrar or ARO find the witness to be relevant,
- If both parties agree, if it is a two party hearing, and
- The hearing will be able to be completed within the timeframe scheduled.

For both late participation and late representation, if a determination on method of resolution is already made at the time of participation or representation, that method of resolution will not generally be altered, even if the late participant or representative has requested a different method of resolution on the Respondent Form.

PRACTICE GUIDELINE: Raising an Ontario Human Rights Code or Canadian Charter of Rights and Freedoms Question

A human rights or constitutional question raised at the ASD will be addressed only after a decision has been made on the substantive issues under appeal under the relevant statutory provision and/or policy (merit review).

If the merit review leads the substantive appeal to be allowed, the ASD will not rule on the human rights or constitutional question.

If the substantive appeal is denied, the ASD will address the human rights or constitutional question.

Ontario Human Rights Code

The ASD has the jurisdiction to consider a question under the *Ontario Human Rights Code* (Code) pursuant to the *Supreme Court of Canada* decision in *Tranchemontagne v. Ontario*.

Where a party to an appeal intends to raise a human rights question under the Code, the party must file a written notice to the ASD providing:

- A detailed explanation of the human rights question being raised along with the material facts;
- The section of the Code relied on, or the legal basis for the argument;
- The desired remedy; and
- The contact information for the party's representative, if any.

Canadian Charter of Rights and Freedoms

The ASD has the jurisdiction to consider a question under the *Canadian Charter of Rights and Freedoms* (Charter) pursuant to the *Supreme Court of Canada* decision in *Nova Scotia (Workers' Compensation Board) v. Martin*.

Where a party intends to raise a question under the Charter, with respect to the legislation or policy applicable for review by the ASD, the party must comply with s.109 of the *Courts of Justice Act*. Section 109 requires a party to serve a notice of constitutional question on the Attorney General of Canada and the Attorney General of Ontario. The notice must be served as soon as the circumstances requiring it become known. A copy of the notice of constitutional question must also be provided to the Director of the ASD and all parties to the appeal.

The notice should be similar to the form provided in the *Ontario Rules of Civil Procedure*. The notice must contain:

- A detailed explanation of the Charter question raised along with the material facts;
- The section(s) of the Charter relied on, or the legal basis for the argument (constitutional principles to be argued);
- The desired remedy; and
- The contact information for the party's representative.

Parties to these appeals must comply with the same requirements as established in the **PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45.**

Written submissions and evidence regarding the human rights or constitutional question will not be required until such time as the ASD deals with those issues.

Failure to Follow Procedure

If the above procedures are not followed, the party will not be permitted to raise the human rights or constitutional question in any proceeding before the ASD.

PRACTICE GUIDELINE: Methods of Resolution and Criteria for Hearings in Writing vs. Oral Hearings

Legislative Requirements

Section 119 (3) states:

The Board shall give an opportunity for a hearing.

Section 119 (4) states:

The Board may conduct hearings orally, electronically, or in writing.

To fulfill legislative requirements, we provide two resolution methods:

- a hearing in writing, or
- an oral hearing. The oral hearing may be held in person or by phone on a teleconference.

NOTE: Employer account appeals are managed differently. If you are looking for information on an employer account appeal, please see **PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on PAGE 61.**

Factors involved in Determining the Method of Resolution

When submitting an Appeal Readiness Form or a Respondent Form, the person submitting the form can tell us if they prefer an oral hearing or a written hearing. The Registrar will consider this preference and determine the method of resolution. A list of guidelines helps Registrars decide if a case should be a hearing in writing or an oral hearing. You can find the **HEARINGS IN WRITING LIST on page 21** and the **ORAL HEARINGS LIST on page 22.**

These lists are guides in making a decision on what type of hearing is more appropriate but each determination is made on a case by case basis. This is to ensure that a fair decision can be made on each issue that is being appealed.

A Registrar will usually determine a hearing in writing is the best method of resolution when the issues are largely medical, legal, or policy based, and credibility is not an issue. The determination whether or not to grant an oral hearing is made by considering what information is already on the claim file.

As they review the claim file, the Registrar considers the questions below. If the answer is “yes“ to one or more of these questions, the Registrar will likely decide an oral hearing is the best method of resolution for the appeal:

- Is direct testimony (making statements under oath) needed from the objecting party or material witnesses? For example: Direct testimony may be required if one party’s evidence is in direct contradiction (i.e. disagrees) with another party’s evidence about the accident date, time, place, location, etc.
- Does the case have significant factual issues in dispute? For example: Surveillance video is presented as evidence, and the parties interpret this evidence differently.
- Is there a reason that someone who does not have a representative cannot make a submission in writing? For example: There is a significant language barrier and a translator is needed.
- Is the information about a worker’s non-organic functional abilities or limitations minimal or

inconsistent? Some examples of these are: activities of daily living, persistent fears or issues associated with the accident, ability to perform common workplace tasks, and ability to interact with others both in and outside of the workplace.

- Is there an issue of credibility* that can only be assessed in an oral hearing?

  *Credibility – whether someone should be trusted or believed – is an issue and an oral hearing is necessary in cases where there is significant conflicting information, and, in particular where the consistency of the evidence of the witness – to either his or her own prior statements or to the evidence as a whole – is in question.

  The following scenarios do not involve an issue of credibility because the ARO will weigh the evidence and make a finding:

  – an injured worker with an organic injury describing their level of impairment and/or pain to an ARO; and
  – disagreement between a worker and an employer about the nature and timing of a job offer or the details of an accident.

Process for Determining the Method of Resolution:

After the objecting party completes the objection process with the operating area and the decision they are appealing doesn't change, they can make a formal appeal by completing an Appeal Readiness Form. On this form they will have the option to request a hearing in writing or an oral hearing.

Request for a Hearing in Writing:

- The objecting party must include their arguments about the issue(s) they are appealing and their reasons for requesting a written hearing on the Appeal Readiness Form.
- When we receive the Appeal Readiness Form, the ASD Coordinator determines if there is a respondent participating in the appeal.
- If there is no respondent, only the Appeal Readiness Form is taken into account when deciding the method of resolution.
- If there is a respondent participating in the appeal, we send them a Respondent Form. They can use this form to respond to the issue(s) under appeal and request their preferred method of resolution.
- If the respondent agrees with the appeal being resolved with a hearing in writing, the respondent should complete the Respondent Form and include all information that they want to be taken into account. If the decision is made to resolve the appeal through a hearing in writing, there is no additional opportunity for the respondent to provide submissions (i.e. make their arguments). Instead, the appeal is assigned directly to an ARO to make a final decision on the issue.
- The Registrar reviews the Appeal Readiness Form and the Respondent Form together. If the respondent has requested an oral hearing, the Registrar reviews the reasons for this request.
- If the objecting party requests a hearing in writing, this method of resolution will usually be granted (even if the issue is normally resolved by an oral hearing).
- A hearing in writing will be granted for cases that are included on the Hearing in Writing List, unless the Registrar decides that there are other factors that would make an oral hearing the best method of resolution.

Request for an Oral Hearing:

- The objecting party must include their arguments about the issue(s) they are appealing and their reasons for requesting an oral hearing on the Appeal Readiness Form.
- If the objecting party requests an oral hearing, they should explain why they believe an oral hearing is necessary, even if their appeal involves an issue found on the Oral Hearing List. This is because there will be appeal cases that, even if found on the Oral Hearing List, would not necessarily require an oral hearing once we review the facts of the case.
- When explaining why they are requesting an oral hearing, the objecting party should be as specific as possible in explaining why they want the oral hearing and outline how it is related to the issue(s) under appeal. For example, the explanation should outline any key missing information, differences in statements, inconsistencies in medical reports and conflicting information between the employee, employer, co-workers and any witnesses.
- When we receive the Appeal Readiness Form, the ASD Coordinator determines if there is a respondent participating in the appeal.
- If there is no respondent, only the Appeal Readiness Form is taken into account when deciding the method of resolution.
- If there is a respondent participating in the appeal, they are sent a Respondent Form. They can use this form to respond to the issue(s) under appeal and request their preferred method of resolution. Like the objecting party, the respondent should provide a detailed explanation as to why they are requesting an oral hearing as the method of resolution.
- The Registrar will review the Appeal Readiness Form and the Respondent Form together.
- An oral hearing will not be granted for cases that are set out on the Hearings in Writing List unless the Registrar decides that there are reasons outlined under "Factors involved in Determining the Method of Resolution" that would call for an oral hearing.

Process following the Method of Resolution Decision

After the decision is made about the method of resolution, here is what can be expected to happen next:

If both parties request a hearing in writing:

- Appeals staff will not contact the parties to let them know the decision on method of resolution. The only exception is if the Registrar decides after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or an argument that is so significant that the objecting party should be granted time to rebut (i.e. disprove the argument). In these cases, a letter will be sent to the objecting party to advise them that they have 21 days (plus five days for mailing) to rebut the submission of the respondent. The case will be assigned to an ARO once the objecting party's rebuttal has been received, or once the 26 days have passed, whichever happens first.
- In all other circumstances, a hearing in writing is assigned directly to an ARO to decide on the issue being appealed. The ARO will make a decision based on the submissions made on or attached to the Appeal Readiness Form and Respondent Form, as well as the information in the claim file.
- The ARO will usually make a decision within 30 days.

If an oral hearing is requested by the objecting party and allowed:

- The parties will be sent a Notice of Hearing letting them know the date, time and location of the hearing.
- The hearing will usually take place within 90 calendar days.

If an oral hearing is requested by the objecting party and denied:

- The parties will be sent a letter letting them know that the method of resolution will be a hearing in writing.
- Both the objecting party and the respondent will be allowed 30 days (plus five days for mailing) to make their arguments in writing on the issue under appeal.
- The objecting party may be allowed 21 days (plus five days for mailing) to rebut the submission of the respondent only if the Registrar decides, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or an argument that is so significant the objecting party should be granted time to rebut this information.

If an oral hearing is requested by the respondent and is denied:

- The parties will be sent a letter letting them know that the method of resolution will be a hearing in writing.
- Both the objecting party and the respondent will be allowed a further 30 days (plus five days for mailing) to make their arguments in writing on the issue under appeal.
- The objecting party may be allowed 21 days (plus five days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or an argument that is so significant the objecting party should be granted time to rebut.

Reconsiderations regarding the Method of Resolution

The WSIB decision on method of resolution is an administrative decision made by the Registrar. A request for reconsideration of this decision can be made to the Registrar. There is no opportunity to request reconsideration by the Manager, Director or Vice-President of the ASD. For more information on the role of the Registrar, **SEE PRACTICE GUIDELINE on ROLE OF APPEALS COORDINATOR AND APPEALS REGISTRAR on Page 24.**

HEARINGS IN WRITING LIST

See PRACTICE GUIDELINE on Methods of Resolution and Criteria for Hearings In Writing vs. Oral Hearings on page 17.

A1.	Initial Entitlement – chance event where there is no factual dispute
A2.	Initial Entitlement one party – only issue is delay in reporting to employer and/or in seeking medical attention and a worker statement explaining delays can be provided
A3.	Initial Entitlement – Disablement where there is no factual dispute and there is sufficient information on file about the worker's reported job duties
A4.	Occupational Disease – medical causation
A5.	Noise Induced Hearing Loss
A6.	Medical Compatibility
A7.	Earnings Basis
A8.	Less than 4 weeks of loss of earnings (LOE) benefits where the dispute surrounds level of impairment
A9.	Job Suitability with or outside of injury employer – no factual dispute
A10.	Job Suitability – information about the offered job(s) and worker's functional information is already on file but parties disagree about job suitability
A11.	Suitability of the Suitable Occupation (SO)
A12.	Recurrence – 1 year or less from the date of injury/illness or 12 weeks or less of loss of earnings
A13.	New organic condition where entitlement rests on medical compatibility
A14.	Secondary Condition where entitlement rests on medical compatibility
A15.	Non-organic conditions – no factual dispute
A16.	Request for an Independent Medical Examination
A17.	Medication
A18.	Co-operation in Health Care Measures
A19.	Health care benefits
A20.	Pension or non-economic loss (NEL) award quantum or redetermination
A21.	Pension Arrears
A22.	Pension or future economic loss (FEL) Commutations
A23.	CPP Offset
A24.	Benefit Related Debt
A25.	Survivor Benefits – general
A26.	Second Injury and Enhancement Fund (SIEF)
A27.	LOE Lock-in – dispute over actual or deemed earnings to determine LOE benefits
A28.	LOE Lock-in – no factual dispute
A29.	Time limit to Object – s. 120
A30.	Time limit to Claim – s. 22
A31.	Any Issue that turns on a policy interpretation or a review and weighing of medical information
A32.	All Employer Account issues not outlined under Oral Hearing list B17 and B18 on page 20

ORAL HEARINGS LIST

See PRACTICE GUIDELINE on Methods of Resolution and Criteria for Hearings In Writing vs. Oral Hearings on page 17.

B1.	Initial Entitlement – Disablement where there is evidence of factual dispute related to the worker's job duties and/or there is insufficient information about the worker's job duties
B2.	Initial Entitlement (generally two party) – chance event where there is contradictory information and/or testimony would add to the information already in the case material
B3.	Complex occupational disease
B4.	Complex non-organic conditions
B5.	Job Suitability with or outside of injury employer – factual dispute
B6.	Job Suitability – information about the offered job(s) and worker's functional information is either not on file or is incomplete, and the parties disagree about job suitability
B7.	Co-operation in Return to Work
B8.	Co-operation in Work Transition (Labour Market Re-entry)
B9.	Work Transition Plans
B10.	Re-employment (where the threshold for re-employment has been met)
B11.	Complex LOE Lock-in – factual dispute
B12.	Recurrence – 1 year or more from the date of injury/illness or 12 weeks or more of loss of earnings
B13.	Survivor Benefits – complex determinations of who is a spouse/dependent
B14.	New organic condition where entitlement does not rest on medical compatibility
B15.	Secondary conditions where entitlement does not rest on medical compatibility
B16.	Transfer of Cost
B17.	Independent Operator and Worker Status

PRACTICE GUIDELINE: Special ADR Projects

Special Alternative Dispute Resolution (ADR) projects are offered by the ASD. Appeal cases arising from larger employers are sometimes dealt with through special projects that are aimed at reaching outcomes more efficiently and more consensually. These projects depend upon the willingness of the employer and the union to seek constructive ways to resolve appeals.

Each project is developed in consultation with the employer and union and procedures vary based on the needs of the parties.

For larger employers and unions where an ADR project has been implemented, the project involves a dedicated ARO who typically provides a written "view" or opinion of the case to the employer and union representatives. A meeting may be held with the employer and union representative where multiple cases are considered. The discussions focus around the "view" and most cases are resolved through this process. A small number of cases proceed to an oral hearing. In some cases, additional enquiries may be identified as necessary before a resolution can be reached.

More information about the opportunity to develop employer-specific ADR projects should be raised with the Vice-President of the ASD.

PRACTICE GUIDELINE: Role of Appeals Coordinator and Appeals Registrar

Role of the Appeals Coordinator

The Coordinator will be responsible for all pre hearing activities of a file prior to assignment to a Registrar or an ARO, and for scheduling oral hearings as required. Files that have been registered in the ASD will be assigned to a Coordinator. The Coordinator will review the Appeal Readiness Form and all attached submissions.

Coordinators are responsible for assigning cases to AROs.

If this is an employer account appeal, the Coordinator will refer to an ARO to determine the method of resolution. **SEE PRACTICE GUIDELINE on EMPLOYER ACCOUNT APPEALS on page 61.**

For all other cases, Coordinators will assign hearings in writing to AROs where the objecting party and the respondent (if there is one) have both requested a hearing in writing, or where a Registrar has denied a request for an oral hearing.

Where either the objecting party or respondent have requested resolution by oral hearing, the Coordinator will refer these cases to a Registrar. The Registrar will make a decision on the method of resolution. If a determination is made that an oral hearing is required, the Coordinator will schedule the oral hearing and assign the case to an ARO. **SEE PRACTICE GUIDELINE on HEARING SCHEDULING on page 29.**

Coordinators will coordinate and ensure the completion of the sharing of submissions when there is a respondent. **SEE PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45.**

Coordinators will also address all pre-hearing issues surrounding summonses, interpreters, travel, etc.

Role of the Appeals Registrar

The Registrar will be the primary contact for workplace parties and their representatives. The role provides unrepresented workers and employers a greater opportunity to discuss the appeals process from the beginning of the process. This role is responsible for reviewing the readiness of the appeal, making determinations on the appropriate appeal method of resolution, addressing disclosure and any add issue requests, making time limit decisions and providing process overview and status updates to unrepresented workers.

All cases where a method of resolution has not yet been determined and/or where a file has not yet been assigned to an ARO are the responsibility of the Registrar, who will respond to questions about status and the appeals process.

If either the objecting party or the respondent requests an oral hearing, the case will be referred to the Registrar to make an administrative decision regarding the method of resolution. This function can be delegated to another decision-maker in the ASD.

If the Registrar determines that a hearing in writing is appropriate, the workplace parties will be advised in writing and the file will be returned to the Coordinator to be assigned to an ARO. If an oral hearing is chosen, the parties will be advised in writing and the file will be returned to the Coordinator for scheduling.

Once a determination has been made by the Registrar that a case will be resolved through a hearing in writing and the case has been assigned, the ARO will not discuss the method of resolution issue with the workplace parties. In rare circumstances, e.g., if an issue(s) is added, the method of resolution may be changed after discussion with the Registrar.

If the Registrar determines that an oral hearing is required, he/she will also make a determination about what witnesses will be authorized, and the location of the hearing. The Coordinator may change the hearing location, as needed, at the time of scheduling.

The workplace parties may ask the Registrar who made the decision to reconsider the decision to deny an oral hearing. However, the reconsideration request must be made in writing directly to the Registrar and must be received within the 30 day (plus 5 days for mailing) period granted to the workplace parties to provide their written submissions.

The Registrar will not stop the clock; written submissions will still be required within 30 days (plus 5 days for mailing), and the Registrar will not perform a reconsideration on method of resolution once a hearing in writing appeal has been assigned to an ARO. If a reconsideration request is received within 30 days (plus 5 days for mailing), the Registrar will reconsider the decision and will not release the case for assignment until the reconsideration is completed.

If a reconsideration decision results in a reversal in the decision, the parties will be advised that the appeal has been forwarded to the Coordinator for scheduling.

If the reconsideration decision is denied and a hearing in writing confirmed, the appeal will be assigned to an ARO at the end of the 30 days (plus 5 days for mailing), whether or not a written submission has been received, and the ARO will proceed to make a decision. The ARO will not accept a late submission after they have started to work on their decision.

If an oral hearing is accepted as appropriate, either the objecting party or respondent may request a reconsideration of the decision made regarding witnesses. Any concerns surrounding the number and nature of witnesses allowed will not delay the scheduling of the oral hearing, but the Registrar may review any reconsideration request about witnesses at any time up to assignment to the ARO.

PRACTICE GUIDELINE: Adding Issues to the Appeals Agenda

Since the objecting parties may take as much time as they need to complete an Appeal Readiness Form, once a file has been registered in the ASD, only under exceptional circumstances will the Registrar permit to add a new issue to the agenda. Where the file is assigned to an ARO the decision to add an issue will rest with the ARO.

If an objecting party believes that an appeal cannot move forward to resolution in the absence of adding an issue, the file will be withdrawn and the consequences associated with appeal withdrawals will apply. **See PRACTICE GUIDELINE on WITHDRAWALS on page 50.**

PRACTICE GUIDELINE: Benefits Flowing

In all cases, the benefits that flow from a decision will be considered part of the issue agenda. The ARO will be responsible for ruling on benefits only to the extent that reliable information is either contained in the file or readily available to the ARO. Therefore, where the ARO accepts entitlement for an impairment or for a period of impairment/disability, the ARO will also resolve the nature, level and duration of benefits to the extent that available information permits.

If the objecting party or respondent requests that "benefits flowing" from a decision not be addressed by the ARO, the ARO will make a preliminary determination on the question at the time the request is made and will reference in the decision why he/she decided to either address or not address "benefits flowing". In the above scenario there is no requirement that both parties must agree before the ARO rules on benefits flowing from a decision.

In cases where an additional issue is presented after the appeal has entered the ASD and the time limit to appeal has expired, the issue will not be added to the agenda; the objecting party may either agree to move forward on the issue(s) contained in their Appeal Readiness Form or may withdraw the appeal and the consequences associated with appeal withdrawals will apply.

PRACTICE GUIDELINE: Downside Risk

The concept of downside risk means that an ARO, when reviewing the claim file, may recognize an error in the adjudication of a related issue that is so significant it cannot be overlooked and must be dealt with in order to decide the issue(s) under appeal. This could result in the reversal of those prior related decision(s).

An example of a downside risk to a worker is an appeal for a higher non-economic loss (NEL) award; an ARO could decide that the worker should receive a lower award than the worker currently receives, or perhaps is not entitled to a NEL award at all. For employers, an example is an employer appeal for an increased level of Second Injury and Enhancement Fund (SIEF) relief; the ARO could determine that the employer is entitled to less relief than they currently receive, or that they are not entitled to SIEF relief at all.

The objecting party will be allowed to withdraw their appeal once a downside risk is identified. There will be no documentation placed on the claim file beyond the indication that downside risk was discussed and the objecting party chose to withdraw.

If the objecting party chooses to proceed with the appeal, the objecting party and the respondent, if any, will be granted a period of 30 days (plus 5 days for mailing) from the date the downside risk was communicated to the party, to make a submission on the downside risk issue.

PRACTICE GUIDELINE: Hearing Scheduling

**Hearings in this guideline could include both oral hearings and hearings by teleconference.*

Initial Scheduling

Once it is determined that an oral hearing is required, the Registrar will refer the file to the Coordinator who will arrange a hearing date. When informed by letter that an oral hearing has been approved, it is expected parties will be available to attend a hearing within 90 days from the date of the letter. The Coordinator will be as flexible as possible in working with the parties to arrive at possible dates for the oral hearing within the 90 days.

If one or more of the parties are not available within the 90-day timeframe, the Coordinator will provide a further 30 days to secure a suitable oral hearing date. If the objecting party is available within 120 (90 + 30) days and the respondent is unavailable within that time period, the oral hearing will be scheduled based on the preferred date of the objecting party.

Situation	Timing	Consequence	Requirement for availability
Objecting Party is granted request for oral hearing	Within 90 days		Oral hearings will generally be scheduled within 90 days of the letter confirming an oral hearing is warranted
Objecting Party unavailable within 90 days	Within 120 days	Further discussion with the Coordinator will occur	Objecting Party must be available within the first 30 days after the 90 day time period
Objecting Party unavailable within the 120 day time period	Can reapply in 30 days	The case is withdrawn and the party will have to wait 30 days to resubmit an Appeal Readiness Form through the Objection Intake Team	Objecting Party must be available within 90 days of the resubmitted Appeal Readiness Form
Objecting Party unavailable within 90 days after resubmitted Appeal Readiness Form.	Can reapply in 90 days	The case is withdrawn and the party will have to wait 90 days to resubmit an Appeal Readiness Form through the Objection Intake Team	Objecting Party must be available within 60 days of the resubmitted Appeal Readiness Form
Objecting Party unavailable within 60 days after resubmitted Appeal Readiness Form		The case is withdrawn for a third time and the party must write to the Vice-President of the ASD to ask for a return to the ASD to have their appeal resolved	

NOTE: If an objecting party or respondent is temporarily unavailable to discuss the scheduling of an oral hearing for reasons beyond their control, such as the sudden and serious illness of the party or the need to leave the country to deal with an emergency, the appeal will not be withdrawn immediately but will remain with the Coordinator who will place the case on administrative hold until the situation has resolved. If the party is unavailable for more than 30 days, the ASD will determine whether to withdraw the case.

Date has been scheduled

Once a date has been arranged, the Coordinator will send a Notice of Hearing to the parties setting out the date, time and place for the hearing. Generally, hearings will be held in the city where the WSIB's file is administered or the city closest to that location where hearings are generally held.

NOTE: At the time of scheduling, the special requirements related to the following should be confirmed with the Coordinator, if warranted: security, interpreter, and summonses, as well as any video evidence that will be submitted. **See PRACTICE GUIDELINE on USE OF SURVEILLANCE MATERIAL IN THE APPEALS SERVICES DIVISION on page 58.**

PRACTICE GUIDELINE: Security and Interpreters

At the request of the ARO, WSIB or outside security may attend an oral hearing without the consent of the WPPs. The parties will be notified in advance that security officers will be present at the hearing. Requests by the WPPs for the presence of security at an oral hearing should be confirmed at the time the hearing is being scheduled.

Requests for security must be based on real and substantial concerns.

Interpreters

The ASD will arrange for an independent and objective interpreter to be in attendance at an oral hearing where it is requested by the WPPs. The party requesting the interpreter should include information about the request in the Appeal Readiness Form or the Respondent Form regarding:

- the need for an interpreter
- the language spoken
- the specific dialect

If there is no indication on the Appeal Readiness Form or the Respondent Form of the need for an interpreter, but one is subsequently requested, this request must be made to the Coordinator at the time the oral hearing is scheduled. If a request is subsequently made, but at least 14 days prior to the scheduled hearing date, the Coordinator will make every effort to obtain an interpreter. If an interpreter cannot be arranged, or if the request comes less than 14 days prior to the scheduled date, the appeal may be withdrawn and the usual consequences associated with a withdrawal without good reason, will be applied. **See PRACTICE GUIDELINE on WITHDRAWALS on page 50.**

For clients who are unrepresented, if the ARO accepts that failure to advise an interpreter was needed was caused due to language difficulties, the oral hearing may be postponed without consequence.

Friends and relatives of appeal participants generally are not permitted to interpret evidence at an oral hearing.

Interpreters are expected to provide verbatim interpretation of testimony unless he or she is directed to do otherwise by the ARO. This alternative direction will occur only if and when the ARO and the parties agree that the individual providing testimony requires only occasional assistance from the interpreter as opposed to verbatim interpretation.

If the interpreter is unable to translate a word or phrase in testimony, or does not understand the testimony, the interpreter must inform the parties in attendance at the oral hearing and await further instructions after a discussion is held between the parties and the ARO.

If an interpreter does not arrive for the oral hearing or if, mistakenly, an interpreter was not arranged, it will be up to the ARO and the parties to determine whether it is appropriate to proceed with the hearing without an interpreter or if the hearing must be adjourned and re-booked. When these circumstances are beyond the control of the objecting party or respondent, the parties will have a further 90 days to reschedule the oral hearing but will be encouraged to be available at their earliest convenience.

PRACTICE GUIDELINE: Summonses and Production of Documents

General

The party requesting a summons should include information about the request in the Appeal Readiness Form or the Respondent Form. The following information should be provided:

- Name of witness
- The reason a summons is necessary
- An address where the witness(es) can be served

In the case of documents, the request must identify the document(s) and indicate who has possession of the document(s). The request should also state the relevance and likely significance of the document(s).

Criteria

In determining whether a summons is essential and should be issued, the following facts should be considered:

- whether the evidence is relevant to the issue(s) in dispute;
- whether the evidence is likely to be significant to a determination of the issue(s) in dispute;
- whether the request to summon a witness will be used for the bona fide purpose of giving evidence before the proceeding or whether it will likely be used to harass or inconvenience the witness;
- whether the oral or written evidence can be obtained in a more reasonable manner. For example, in situations involving physicians or LMR/WT Service Providers it is generally more appropriate to obtain necessary information or clarification through written questions;
- whether the summons request is being used for the purpose of "fishing" in the hopes of
- obtaining relevant information;
- whether the person receiving the summons has access or control of information/ documents, relevant to the case. The summons should be issued to the person with custody of the necessary documents;
- whether the prospective witness is compellable in the proceedings (WSIB policy has established that WSIB employees are not compellable witnesses and other statutes limit the compellability of certain witnesses).

In complex cases, advice and direction in deciding if a summons should be issued may be sought from the Vice-President or Manager(s) of the ASD.

Procedures

Once a file has been scheduled, the Registrar will review the Appeal Readiness Form and make a determination on whether a summons is required before assigning the file to an ARO.

If there is no indication on the Appeal Readiness Form or the Respondent Form of the need to summon a witness(es) or a document(s), but one is subsequently requested, this request must be made to the Coordinator at the time the oral hearing is scheduled. If a request is subsequently made, but at least 30 days prior to the scheduled hearing date, the Coordinator will make every effort to ensure the processing of a summons. If a request for a summons comes less than 30 days prior to the scheduled date, the appeal will be

withdrawn and the usual consequences associated with a withdrawal without good reason, will be applied. **See PRACTICE GUIDELINE on WITHDRAWALS on page 50.**

Where the Coordinator concludes that the document or the proposed witness is not essential to a determination of the issue in dispute, the Coordinator will communicate this to the parties in writing.

The Process Service Provider (PSP) will arrange for the summons to be served and provide the ASD with an Affidavit of Service that will be duly witnessed by a Commissioner.

At the oral hearing, should the summoned document or witness not be produced or attend, as the case may be, or where the Coordinator has refused to issue a summons, the ARO may:

- proceed without the evidence or the witness if it is determined that the evidence in question is not essential to the disposition of the issue(s) in dispute;
- proceed with the oral hearing, indicating that a decision on the need for the production of evidence or attendance of a witness will be reserved until the conclusion of the hearing. Where, at the conclusion of the hearing, it is determined that the evidence in question is essential, the ARO will direct the information be obtained by other means, or direct that the hearing be re-convened and that appropriate summonses be issued;
- decide at the outset that the summons should be issued and postpone the oral hearing for that purpose. This course of action should only be taken where the evidence in question is so critical as to make proceeding to hear the available evidence unreasonable.

If the summoned witness does not attend and the ARO is satisfied the evidence to be given is essential, then the ARO may decide to re-issue the summons with instructions to the PSP to communicate to the witness the necessity of attending a future hearing, or the ARO may recommend that the WSIB proceed with contempt proceedings against the witness. Such a decision shall be made in consultation with ASD management and the WSIB's General Counsel.

PRACTICE GUIDELINE: Hearing by Teleconference

Hearing by teleconference may be used instead of an oral hearing and may be useful in situations where a party is physically unable to travel, lives in an area where oral hearings are not generally held, where transportation is difficult, where an expedited decision is required, or where all parties and the ASD agree.

If a request for a hearing by teleconference is requested on the Appeal Readiness Form, the Registrar will review the criteria below and the circumstances of the case and will determine if hearing by teleconference is appropriate. If, after an oral hearing has been scheduled and assigned, the ARO determines that a hearing by teleconference is appropriate, they can consider presiding over the oral hearing by teleconference.

In order to approve a hearing by teleconference the ASD must ensure:

- there is agreement amongst the parties and the ARO that the case is clear and uncomplicated enough to be addressed without the personal attendance of one or more of the parties;
- a copy of the updated file and other relevant documents needed for the hearing are available to all parties prior to the teleconferenced hearing;
- the ARO has determined that proceeding in this manner will not result in any significant prejudice to a party; and
- if credibility issues can be addressed through a teleconference.

Parties must comply with the same disclosure and scheduling requirements as exist for an oral hearing.

PRACTICE GUIDELINE: Postponements

**Note: Hearings in this guideline include both oral hearings and hearings by teleconference.*

A postponement means the hearing will not go ahead on the date it was scheduled and will need to be re-booked for another date.

Both objecting parties and respondents are required to declare, when signing the Appeal Readiness Form and Respondent Form, that they are ready to attend a hearing within 90 days of the date it is determined a hearing is warranted. Hearings are scheduled in consultation with the WPPs, and the ASD is as flexible as possible in providing a number of potential dates to the workplace parties. Therefore, the ASD expects parties to be prepared for the hearing and ready to attend once a date is set.

Once a hearing date has been established, postponement requests should be made only in exceptional circumstances. The criteria set out below establish what is considered "exceptional", for the purposes of this guideline.

Pre-hearing Requests for Postponement – Exceptional Circumstances

The Coordinator will deal with all pre-hearing requests for postponements. The Coordinator has the authority to grant a postponement request where it meets one of the following criteria:

- sudden illness of the worker;
- sudden illness of the worker's representative where no replacement is reasonably available;
- sudden illness of the employer where the employer is to act as the representative and there is no one else who could reasonably represent the employer at the oral hearing;
- sudden illness of the employer's representative if no replacement is reasonably available;
- death of one of the parties or a member of his/her immediate family;
- death of the representative or a member of his/her immediate family if no replacement is reasonably available;
- unusual adverse weather conditions on the day of the hearing or an accident while en route to the hearing.

Where a postponement request just prior to the hearing is granted pursuant to the exceptional criteria set out above, the Coordinator will notify the WPPs and the relevant WSIB office(s), and will arrange for another hearing date. The objecting and/or responding party are required to inform their own witnesses that the scheduled hearing has been postponed.

When an oral hearing is postponed for any of the exceptional circumstances set out above, both the objecting party and the respondent, if there is one, are expected to be available for an oral hearing within 90 days of the date of the initial hearing.

At any stage of this process, requests for postponement must be made to the Coordinator.

For more information on the consequences of late participation/representation, **see PRACTICE GUIDELINE on LATE REPRESENTATION AND PARTICIPATION on page 13.**

Pre-hearing Requests for Postponement – Other than Exceptional Criteria

If either the objecting party or respondent requests a postponement at any time after the hearing date has been set, and the reason does not meet the exceptional criteria set out above, a postponement may be granted but the request must:

- be made in writing and forwarded directly to the Coordinator, by fax to 416-344-3600, or by mail to the WSIB address, Attention: Appeals Services Division;
- set out the compelling reason for the request; and
- be sent to the other party and/or representative, asking the other party to consent to the postponement.

**Please note a telephone call alone will not be sufficient. A telephone call must be followed by a written request.*

After reviewing the above, the Coordinator will decide if the postponement request will be granted or if the case will be withdrawn.

If a postponement request is granted for reasons other than the exceptional criteria set out above, the party requesting the postponement is expected to be available for an oral hearing date within 45 days of the date the postponement is approved.

If the objecting party requests the postponement, the case will be withdrawn if they are not available within 45 days of the postponement being approved. If the objecting party requests the postponement and is available within 45 days, but the respondent is not available within 45 days, the Coordinator will set the date on the basis of the availability of the objecting party.

If the respondent requests the postponement, and if a mutually convenient date within the 45-day period cannot be found, the Coordinator will set the date on the basis of the availability of the objecting party.

Postponement Requests at the Hearing

Postponement requests made at the hearing will be ruled on by the ARO after giving full opportunity to both parties/representatives to present arguments with respect to the request.

The reasons for granting or denying requests for postponement must be communicated to the parties orally at the time of the hearing.

The following criteria will be weighed by the ARO in determining whether to grant a postponement request. It should be noted that the consent of the other party does not, by itself, constitute sufficient reason to grant the postponement request:

- was adequate and sufficient notice of the hearing date provided to the parties seeking the postponement;
- was the hearing date arranged by mutual consent;
- are the facts giving rise to the request for the postponement compelling and reasonable;
- to what extent does the need for postponement arise out of the intentional actions or neglect of the party/representative requesting the postponement;
- what prejudice will result to both parties if the request is either allowed or denied;

- how long has the party requesting the postponement been aware of the facts giving rise to the request and what steps were taken prior to the hearing to remedy the situation and to inform the WSIB;
- can any procedural defects, such as the late receipt of written materials, be remedied through delaying the starting time of the hearing, or making any other direction that will minimize or eliminate the prejudice of not granting a postponement; and
- whether the party requesting the postponement has a history of previous postponements in this case or other cases dealt with in the ASD.

If the ARO denies the postponement request at the time of the hearing, the hearing will proceed. However, if the objecting party does not wish to proceed, the appeal will be withdrawn from the ASD, and all of the consequences set out in the **PRACTICE GUIDELINE on WITHDRAWALS on page 50**, will apply.

If a postponement is granted at the oral hearing, the party requesting the postponement is expected to be available for an oral hearing date within 45 days of the date the postponement is approved.

If the objecting party requests the postponement, the case will be withdrawn if they are not available within 45 days of the date the postponement is approved.

If the respondent requests the postponement, if a mutually convenient date within the 45-day period cannot be found, the Coordinator will set the date on the basis of the availability of the objecting party.

PRACTICE GUIDELINE: Conducting Oral Hearings

**It is important to note that the circumstances of each case will determine the extent to which all procedures will be followed.*

Receiving Evidence

Evidence will be received by the ARO at the time of the oral hearing according to the rules established in the **PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45.**

Oral Hearing Procedures

Purpose

The purpose of an oral hearing is to gather information in a thorough, fair and courteous manner. In doing so, every effort should be made to create and maintain a non-adversarial atmosphere.

Prior to Entering the Hearing Room

Prior to entering the hearing room, the ARO shall:

- determine the presence of and identify all individuals who will be participating in the hearing and ascertain their roles;
- explain that witnesses will be excluded from the hearing room until they are required to give testimony. This does not apply to the worker and/or an individual designated by the employer as its resource person. An employer is permitted to have one designated resource person. This individual is allowed to remain in the hearing room throughout the proceedings;
- decide whether or not observers will be permitted to be present at the hearing. As a general rule, ASD hearings are held "in camera", which means they are not open to the public. However, the ASD generally permits observers to attend where all parties consent, unless there are compelling reasons for excluding observers (i.e., sensitive factual issues, matters of space, potential security problems). The ARO will instruct observers that they are not entitled to participate in the hearing or record the hearing.

In the Hearing Room Prior to Going on the Record

Before going on the record, the ARO shall:

- outline the purpose of the hearing and how it will proceed (i.e., the order of presentations);
- discuss/confirm with the parties the issues to be dealt with and advise the parties of information or facts that are already established from the evidence and of the specific areas of enquiry which will be necessary in order to deal with the issues under objection;
- clarify with both parties which witnesses will be called and the nature of their testimony. The ARO should not hear from witnesses whose evidence is irrelevant to the issue under objection or relates to non-contentious matters of fact already accepted by the ARO;
- If multiple witnesses are being called to provide the same information, the ARO should seek agreement from the parties with respect to those facts;

- explain that the information received from the witnesses will be given under oath or affirmed, as the witnesses prefer;
- indicate that a recording device will be recording everything that is said during the course of the hearing, but that participants are not permitted to record hearings using cell phones or other personal recording devices; and
- if an interpreter is present, explain that the interpreter is not an employee of the WSIB, and explain how the interpreter will be used; and
- if both parties request the ARO engage in mediation (or agreement) discussions, the ARO must first advise that he/she will proceed to make a decision if a consensual outcome is not reached.

If a question arises as to whether or not the case should be returned to Operations, withdrawn, or postponed, the **PRACTICE GUIDELINES on RETURNS TO OPERATIONS on page 49**, **WITHDRAWALS on page 50**, and **POSTPONEMENTS on page 35** will apply.

The Oral Hearing

Opening the Hearing – Preliminary Matters

The oral hearing shall proceed in the following manner:

- the ARO shall state for the record the date and location of the oral hearing, the name of the ARO, the name of the worker, the claim or firm number, the date of decision being objected to and whose objection it is;
- the ARO will identify for the record all those in attendance at the hearing and their role;
- the issue(s) under objection will be confirmed;
- the ARO will determine if any additional written documents provided by the parties will be accepted. **SEE PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES ON page 45**;
- Any documents accepted will be marked as an exhibit. Exhibits are to be numbered and each will bear, in the case of a claims objection, the worker's name, claim number, date received and the initials of the ARO, and in the case of an employer account appeal, the employer's name, firm number, date received and the initials of the ARO.

The ARO will have to determine appropriate procedures to ensure fairness to the party receiving the additional documents at the oral hearing. This may include delaying the start of the hearing to give the representative an opportunity to review and discuss the documents with the party and/or witnesses. The ARO may also offer an opportunity to make post-hearing submissions on any of the documents submitted. The ARO may also consider postponing the hearing where the unfair disadvantage to the receiving party is so significant that no other procedure can overcome the disadvantage. This will constitute an exceptional reason for postponement. **See PRACTICE GUIDELINE on POSTPONEMENTS on page 35.**

The parties will be asked if there are any preliminary issues to be raised and the ARO will receive submissions and make rulings with respect to such matters. The ARO may also reserve ruling on any preliminary issues where a decision does not have to be made in order for the hearing to proceed. A request that a summons be issued, for example, may be deferred by the ARO until after all evidence has been heard, at which time the necessity of the information in question may be clearer. If a preliminary issue raised causes the ARO to conclude that it is not appropriate to proceed with the hearing, the hearing may be postponed. Since it is expected such matters should be presented prior to the date of the scheduled oral hearing, this would not

constitute an exceptional reason for postponement. **See PRACTICE GUIDELINE on POSTPONEMENTS on page 35.**

Presentations

In cases where the appeal participants are represented, the ARO will receive the presentations of the parties in the following order:

- each party/representative will be given an opportunity to make a brief opening statement which will be a summary of their respective positions, with the objecting party first, followed by the respondent party;
- the objecting party will be sworn/affirmed and give evidence through questioning by the representative, the responding representative and then the ARO. Following the ARO's questions, the respondent and the respondent's representative will have an opportunity to ask follow up questions. The respondent will ask questions which arise from the questions asked by the ARO while the party's representative will have an opportunity to ask questions arising from the questions of the ARO and the responding representative.
- if the objecting party is the worker and the worker's representative concludes that he/she does not wish to call the worker as a witness, the worker will be required to answer any questions posed by the respondent and the ARO; if the worker refuses to testify, the ARO may take a negative inference from that refusal;
- after the objecting party has testified, the other witnesses for the objecting party will be called, sworn/affirmed and questioned in the same order as above;
- the respondent will then be given an opportunity to present information through its witnesses. The respondent/representative will ask questions first, followed by the objecting party/representative, followed by the ARO, with follow up questions after that. It should be noted that for an employer's case, the decision on whether or not to call the resource person first is to be made by the employer's representative, but if that individual is not called first and remains in the hearing room while the other witnesses testify, the ARO should advise that their presence will be considered when weighing their testimony;
- in the case of a worker appeal, where the employer resource person is also going to provide testimony, the employer resource person will be asked to testify before the worker testifies. If the employer representative submits that the worker should testify first, the employer resource/witness will be allowed to remain in the room while the worker testifies but will be advised by the ARO that in the event that credibility is an issue, their presence will be considered when weighing their testimony;
- each witness should be sworn/affirmed when they enter the hearing room and before questions are asked;
- the ARO must ensure that the questions asked of witnesses are relevant to the issues under appeal and will refuse to permit questioning in relation to matters considered to be irrelevant. Cross-examination is not permitted although cross-questioning is allowed. The distinction between cross-examination and cross-questioning is discussed later in these guidelines;
- in appropriate cases, to be determined by the nature of the issue and the relative abilities of the representatives, the ARO may suggest to the parties that, having reviewed the contents of the file, the ARO wishes to clarify certain information in order to focus the enquiry. If parties agree to this approach, the ARO will question the worker/witnesses first. The parties/representatives will then follow with

additional questions as may be necessary. If the parties/representatives object to this approach, the ARO will follow the normal oral hearing protocol set out above;

- witnesses are dismissed from the hearing room (except worker and employer) after giving testimony;
- after all testimony has been received, the ARO will invite closing submissions from each representative/party with the objecting party first, followed by the respondent;
- each representative may want to respond to the other representative's closing submissions. This is permissible as long as the representatives do not rehash old ground and limit themselves to responding to the specific areas covered by the other side that were not addressed in their own final submissions. The objecting party has the last opportunity to respond to the submission of the respondent.

In circumstances of an unrepresented party(s), opening statements and closing submissions will be invited and the ARO will likely be the only one asking questions.

Recesses – Going off the Record

Where the hearing continues for more than 1 to 2 hours, it will likely be necessary to take a break.

Where possible, breaks should not occur in the middle of a witness' testimony. Where this is unavoidable, the ARO should advise the witness to refrain from discussing their testimony with anyone during the break.

Where, for any reason during the hearing, it becomes necessary to go off the record (turn off the recording device), the ARO should state at the outset the reason for going off the record and, when back on the record, disclose the nature of any discussions or activities that occurred off the record.

Closing the Hearing

The ARO will conclude the hearing as follows:

- explain that all evidence presented at the hearing as well as the information on file will be considered in reaching a decision;
- explain that a written decision will be made and sent to all parties and representatives;
- thank the parties for their attendance and advise them "the hearing is closed".

Cross Questioning vs. Cross Examination

It is a long-standing practice of the WSIB not to permit cross-examination at hearings. Cross- examination is an integral part of the adversarial approach relied upon in the court system, but is not consistent with the enquiry-based adjudication approach of the WSIB.

Rules of procedural fairness and the need to determine the merits and justice of the case require that an opposing party/representative be given an opportunity to question witnesses with adverse interests. The opposing party/representative is limited, however, to questions which seek to clarify information relevant to the case. The process of clarification is done through cross-questioning.

Cross-examination represents a more adversarial approach to questioning which is reflected in efforts to badger, attack or argue with the witness. This approach may intimidate parties and witnesses from coming forward with information and participating in the proceedings. It also creates an atmosphere which is more formal and more confrontational and can result in a significant disadvantage to individuals who are unrepresented.

Disruptive Behaviour

In cases where one or more of the parties or representatives conduct themselves in a disruptive manner that prevents the reasonable conduct of the hearing, the ARO shall put the individual(s) on notice that their behaviour is unacceptable and advise them of the ARO's authority to exclude them from the hearing room if the behaviour continues. If the behaviour does continue, the ARO has the authority to order the exclusion of the individual.

Where an exclusion order is made against one of the representatives, and to avoid prejudice to the affected party, the ARO has the authority to adjourn the oral hearing to a later date. It is up to the ARO to determine if this is necessary to permit the party whose representative has been excluded to obtain a new representative.

PRACTICE GUIDELINE: Failure to Attend an Oral Hearing

It is expected that WPPs and their representatives will arrive for the oral hearing and that the hearing will start at the time stated on the hearing notice.

If an unforeseen circumstance/emergency causes a WPP to arrive late for the oral hearing or not to be able to attend at all, the party is expected to contact the WSIB/ASD as soon as they are aware they will be late/absent and definitely prior to the time the hearing is scheduled to commence.

In Toronto, the party should contact the responsible Coordinator. For District Office oral hearings, the party should contact either the responsible Coordinator or personnel at the District Office. For oral hearings held outside of Toronto at non-WSIB offices, the party should contact the responsible Coordinator.

If telephone contact is made, it is at the ARO's discretion, after discussion with the party who is in attendance, to determine whether the oral hearing will be delayed or cancelled and then re-scheduled.

If the respondent has not contacted the relevant WSIB personnel by the time of the scheduled hearing, the ARO will wait another 15 minutes and then proceed with the oral hearing. If the respondent arrives after the start of the hearing, they will be permitted to join the hearing in progress but there will be no obligation on the part of the ARO to restart the proceedings.

If the objecting party has not contacted the relevant WSIB staff within 30 minutes of the scheduled time of the oral hearing, the hearing will be cancelled and the appeal will be withdrawn. The consequences set out in the **PRACTICE GUIDELINE on HEARING SCHEDULING on page 29** will apply, unless the party provides reasons in writing to the Coordinator, for both the failure to attend and the failure to contact the WSIB within 30 minutes of the scheduled time. If an explanation for the failure to attend is received, and if it is determined that one of the exceptional circumstances set out in the postponement criteria have been met, the Coordinator will reactivate the appeal and the hearing will be rescheduled within 90 days.

If the representative of either party arrives at the oral hearing with instructions to proceed without their client, the ARO will proceed.

PRACTICE GUIDELINE: Recordings/Transcripts

The WSIA does not require oral hearings to be recorded. However, the WSIB generally makes audio recordings of oral hearings. In case of technical difficulties with the digital recording equipment*, the hearing will continue despite the inability to record the proceedings.

Parties are not permitted to record oral hearings.

The *Workplace Safety and Insurance Act* does not require that the WSIB provide transcripts of hearings and the WSIB does not generally produce or use transcripts of its hearings.

Once a decision has been reached, parties to an appeal may request a copy of the audio recording of the oral hearing. In order to obtain a CD copy of the recording, a party to an appeal must contact 416-344-1014 to make the request.

A CD copy of the oral hearing is considered personal information under the F*reedom of Information and Protection of Privacy Act* (FIPPA) and the release and use of this information is governed by s.58 and s.59 of the WSIA.

Parties wishing to obtain a written transcript of the oral hearing will need to make their own arrangements to have this done, once they receive a CD copy of the recorded hearing.

**Digital recording equipment is now being used in the ASD. CD copies are not available for previous oral hearings that were recorded on cassette tapes.*

PRACTICE GUIDELINE: Rules of Disclosure and Witnesses

**Hearings in this guideline could include both oral hearings and hearings by teleconference.*

Section 131 of the WSIA allows the WSIB to determine its own practice and procedure.

Section 132 of the WSIA allows the WSIB to summon witnesses and requires parties to provide documents and items that the WSIB considers necessary to make a decision.

The purpose of the rules set out below is to ensure that all participants and the ARO have the same information so they can determine the issues under appeal, identify any additional information that may be required, and prepare for the oral hearing if that is the determined method of resolution.

Hearing in Writing

The objecting party is responsible for including all documentary information, including medical information at the time of the submission of the Appeal Readiness Form. Similarly, the respondent must include all documentary information with the Respondent Form.

When both parties request a hearing in writing, any submissions/arguments must be included on or attached to the Appeal Readiness Form/Respondent Form. There will be no further opportunity to argue the merits of the appeal with anyone in the ASD, before the file is referred to an Registrar to make a decision.

In these cases, the objecting party may be permitted 21 days (plus 5 days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or argument that is so significant the objecting party should be granted time to rebut.

Once the disclosure process has been concluded, the Coordinator will assign the hearing in writing case to an ARO.

Alternatively, if one or both parties request an oral hearing, a decision on the method of resolution will be made by the Registrar. If the Registrar concludes the appeal will be resolved through a hearing in writing, both parties will be granted a further 30 days (plus 5 days for mailing) to make a detailed written submission. The objecting party may be permitted 21 days (plus 5 days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or argument that is so significant the objecting party should be granted time to rebut.

Oral Hearing Stage

General

Once an appeal is at the oral hearing stage, the parties are responsible for taking appropriate steps to ensure that all approved witnesses will be available at the hearing and for dealing with any procedural issues that may arise prior to the hearing. Any enquiries should be made to the Registrar.

In determining whether or not the ASD will issue a summons, the criteria set out in the **PRACTICE GUIDELINE on SUMMONSES AND PRODUCTION OF DOCUMENTS on page 32**, will apply.

If, at the time of scheduling, the WSIB receives a written request to obtain outstanding information, the case will be withdrawn if it is the objecting party that makes such a request, as this would contradict the declaration of appeal readiness made when signing and sending in the Appeal Readiness Form. If it is the respondent making such a request, the case will proceed unless the outstanding information is so important that to proceed with the hearing would hinder the ability of the ARO to make a decision based on the real merits and justice of the case.

Documentary Evidence

Evidence that did not exist

There may be rare circumstances where, both for the objecting party and the respondent, relevant documentary evidence that did not exist, either at the time of the submission of the Appeal Readiness Form or the Respondent Form, or during the period of disclosure of submissions once a file has been registered in the ASD, is submitted for consideration by the ARO, either prior to the oral hearing or at the oral hearing. This evidence will only be accepted by the ARO if a reasonable argument is made about why such evidence was not available at the time of the submission of the Appeal Readiness Form.

Where documentary evidence is submitted prior to the oral hearing, and the other party has not been copied, the Registrar is responsible for ensuring that access to these documents is provided to the other party. While the overall responsibility for the provision of documents would still remain with the party forwarding the document(s), it is more important at this stage to ensure the other party has access to the documents in time to ensure they will not be prejudiced in the preparation and presentation of their case.

Evidence that did exist

For evidence that did exist at the time of the submission of the Appeal Readiness Form or Respondent Form, but was either missed by the representative(s) or was not provided to them by their client, such evidence will be accepted by the ARO, either before or at the oral hearing, if:

- it is found to be relevant by the ARO,
- both parties agree, if it is a two party oral hearing, and
- the hearing will be able to be completed within the timeframe scheduled.

Public Information

The ASD recognizes there is public reference material that an objecting party or respondent might discover in preparation for an oral hearing. For material such as:

- WSIB policies
- WSIAT decisions
- WSIAT Medical Discussion Papers
- Published decisions of other AROs,

The oral hearing participants can present the material at the time of the oral hearing. The party providing the public document(s) should ensure that a copy is provided to the ARO and to the participating party, if there is a party participating in the oral hearing.

Witnesses

The objecting party is expected to include in their Appeal Readiness Form a list of their witnesses, along with a "will say" document for each witness. The respondent is expected to provide this same information at the time they are providing their Respondent Form to the ASD regarding both the substance of the appeal as well as the method of resolution.

A "will say" document is essentially a brief summary of the evidence that each witness (other than the worker or employer) will provide at the hearing.

The WSIB takes the approach that only one witness is needed to testify on the same or similar evidence. If a party believes that more than one witness is necessary to address the same or similar evidence, they must advise why it is not sufficient for the other witness(es) to provide a written statement. A balanced approach will be taken on the number of witnesses for both the objecting party and respondent in both claims and employer account appeals.

No additional new witnesses not referenced on the Appeal Readiness Form/Respondent Form will be authorized once the Registrar has made a decision on the allowance of witnesses, unless the circumstances warrant it in relation to late participation, late representation, or a late change in representation **see PRACTICE GUIDELINE on LATE REPRESENTATION AND PARTICIPATION on page 13**, and **PRACTICE GUIDELINE on ROLE OF THE APPEALS COORDINATOR AND APPEALS REGISTRAR on page 24.**

Parties must advise the ASD and the opposing party of the removal of a witness from the witness list at least 7 days prior to the scheduled oral hearing date.

Surveillance Material

Video evidence must be submitted, in an acceptable format, to the WSIB by the objecting party at the time of the provision of the Appeal Readiness Form, and by the respondent at the time they provide their submission to the ASD regarding both the substance of the appeal as well as the method of resolution.

In exceptional circumstances, the respondent will be permitted to provide the video evidence at least 30 days prior to the scheduled oral hearing date. It must be provided to the objecting party at the same time it is provided to the ASD.

For more information on the use of surveillance material in the ASD, **see PRACTICE GUIDELINE on USE OF SURVEILLANCE MATERIAL IN THE APPEALS SERVICES DIVISION on page 58.**

Medical Reports/Records

In circumstances where a party or representative has provided an opinion medical report obtained on their own initiative, the individual is required to provide to the ASD the letter or memo sent by the requesting party or representative, to the doctor asking for his/her opinion, along with the medical report received.

The objecting party is required to provide/attach all medical reports they intend to rely on at the time they submit the Appeal Readiness Form. The respondent is expected to provide any medical reports they intend to rely on at the time they are providing their submission to the ASD regarding both the substance of the appeal as well as the method of resolution.

The ASD will allow the provision of medical reports/records by either the objecting party or the respondent either prior to or at the oral hearing if reports/records relate to medical assessments/procedures that

occurred between the date of submission of the Appeal Readiness Form/Respondent Form and the date of the oral hearing.

A medical report/record that does not relate to medical assessments/procedures that occurred between the date of submission of the Appeal Readiness Form/Respondent Form and the date of the oral hearing will be accepted by the ARO, either before or at the oral hearing, if:

- it is found to be relevant by the ARO,
- both parties agree, if it is a two party oral hearing, and
- the hearing will be able to be completed within the timeframe scheduled.

NOTE: For both documentary evidence and medical reports, it is crucial that the workplace parties provide new evidence as early in the process as possible so that the other side has a meaningful opportunity to consider the evidence and prepare their case.

Alternatively, if one or both parties request an oral hearing, a decision on the method of resolution will be made by the Registrar. If the Registrar concludes the appeal will be resolved through a hearing in writing, both parties will be granted a further 30 days (plus 5 days for mailing) to make a detailed written submission. The objecting party may be permitted 21 days (plus 5 days for mailing) to rebut the submission of the respondent only if the Registrar concludes, after reviewing the Respondent Form and any attached evidence or submissions, that the respondent's submission contains new evidence or argument that is so significant the objecting party should be granted time to rebut.

PRACTICE GUIDELINE: Returns to Operations

General

The Objection Intact Team (OIT) will return files to the original decision maker when the Appeal Readiness Form raises new issues or when significant new information is provided either in or attached to the Appeal Readiness Form.

Once an appeal has been registered in the ASD the file should only be returned to Operations in exceptional circumstances where activity occurring between the time of reconsideration in Operations and the date a case is assigned or an oral hearing occurs has:

- led to a situation where it is not possible for the ARO to conclude on the presenting issue(s) due to either a significant deficit in the information that cannot be reasonably overcome through testimony, or
- raised other issues that may reasonably impact the issue in dispute that have not yet been ruled on by Operations.

Procedures

A return will not be made without first discussing it with the parties. Where a return does occur, the ARO will complete a memo outlining the reasons for the return. The “return” memo will be sent to Operations and a copy will be sent to the parties/representatives. Returns will be routed through the Appeals Manager to OIT.

Where the action required to be taken by Operations is completed, but one or more issues remain in dispute, the case may re-enter the ASD once the objecting party completes and returns a new Appeal Readiness Form. A new Appeal Readiness Form is necessary because the appeal issues may have changed and it is necessary for both the objecting party and the participant if there is one, to have updated claim file information.

OIT must complete a new Appeals Referral Memo.

PRACTICE GUIDELINE: Withdrawals

General

Withdrawn cases may ultimately re-enter the ASD. Withdrawn cases occupy the resources of both the WPPs and the ASD and cause significant delays in the appeals process.

Given the flexibility given to the workplace parties to take as much time as is needed to prepare their case prior to submitting an Appeal Readiness Form, withdrawals from the ASD should be rare. When withdrawn appeals re-enter the ASD they will not be given priority status.

Consequences of Withdrawals

Registered in Appeals Services Division, but Objecting Party Withdraws Case	Consequence
1st Withdrawal	The case will be withdrawn and the party will have to wait 30 days to resubmit an Appeal Readiness Form through OIT.
2nd Withdrawal	The case will be withdrawn and the party will have to wait 90 days to resubmit an Appeal Readiness Form through OIT.
3rd Withdrawal	The party must write to the Vice-President of the ASD to ask to return to the ASD to have their appeal resolved.

NOTE: If an objecting party or respondent is temporarily unavailable to participate in the submission and disclosure process for reasons beyond their control, such as the sudden and serious illness of the party or the need to leave the country to deal with an emergency, the appeal will not be withdrawn immediately but will remain with the Coordinator, who will place the case on administrative hold until the situation has resolved. If the party is unavailable for more than 30 days, the ASD will determine whether to withdraw the case or proceed with the appeal.

PRACTICE GUIDELINE: Resolution Stage

Decisions

Decisions will be written in a clear and concise manner using plain language and will generally be written in an anonymized style.

Where findings are made on the basis of credibility, reasons must be given for accepting or rejecting the credibility of a statement made by an individual. Where findings are made on the basis of the weighing of medical evidence, reasons will be given for more weight being placed on one medical report as opposed to another.

Written decisions should follow formats appropriate to the case. In all cases, the decision must set out:

- the issues under objection;
- a brief description of how the issues arose;
- the applicable policy reference; the method of resolution;
- the evidence considered and how it was weighed; and
- the conclusion reached.

Decisions will not include lengthy summaries of information found in the file record and will focus instead on the information the ARO has found relevant to the issue(s) before them.

Once the decision has been signed, a copy will be sent to the parties. A copy will also be placed on the claim or firm file and sent to Operations.

In the covering letter sent with the decision, the parties will be advised of the relevant time limit for appeals to the WSIAT.

Agreements

Agreements are reached when the participating parties and the ARO agree on an outcome.

The parties will be advised at the time of the resolution that the agreement constitutes a final decision of the WSIB.

A document confirming the agreement will be prepared by the ARO. It will cover the same information as a decision (see paragraph #3 under "Decisions" above) and show how the agreement is consistent with the WSIA and WSIB policy.

In the covering letter sent with the confirming document, the parties will be advised of the relevant time limit for appeals to the WSIAT.

PRACTICE GUIDELINE: Reconsiderations in the Appeals Services Division

Authority

Section 121 of the WSIA states the WSIB may reconsider any decision made by it and confirm, amend or revoke the decision. WSIB Policy 11-01-14 confirms this authority and gives the decision maker and the decision maker's Manager the right to reconsider.

Principles

An ARO decision is the final decision of the WSIB. In an enquiry-based system, the information gathering activities leading up to the final decision engage the WPPs in the process. This allows every opportunity for the parties to provide information and evidence in support of their respective positions.

The reconsideration authority is not intended to be used to simply reargue the position of the WPPs or act as another level of appeal and is only applicable in certain circumstances.

In the ASD, the individuals who could be asked to undertake reconsideration are: the ARO, an Appeals Manager, and the Vice-President.

Requests for Clarification

There may be cases where an ARO decision is perceived by the WPPs or other WSIB staff to be unclear, incomplete or to have an obvious error (e.g., a typographical error that does not impact the decision).

The criteria surrounding the reconsideration of decisions do not prevent an ARO from issuing an addendum to clarify a decision, correct a date, or complete an incomplete decision. This may be done where the text of the decision did not correctly reflect the ARO's intent or include a decision on all the issues that were properly before them.

The clarification request must not be used as a disguised challenge of the decision or as a means of having the ARO decide an issue that was not part of the original appeal issue agenda.

The request for clarification must be made directly to the ARO who made the decision and must be made in writing. If the ARO is no longer in the ASD, the request should be sent to the Appeals Manager.

Standard of Review for Reconsideration

The criteria that would cause a decision to be reconsidered are:

- a substantive defect in the decision or the decision-making process that may reasonably affect the outcome;
- failure to properly apply the Act or approved WSIB policy;
- significant new evidence that did not exist at the time the ARO decision was made, and that is relevant to the issue(s) under appeal; or
- a typographical error that impacts the decision.

NOTE: *Exist vs. Available** – Material that was available but was not provided to the ASD at the time the ARO decision was made will not trigger the reconsideration process.

Application Procedure from Workplace Parties

An application for reconsideration from any of the WPPs must be submitted in writing, generally first to the ARO and if necessary, to the ARO's Manager, and finally, to the Vice-President of the ASD. The submission must state the reasons for the request and reference which standard of review criteria have been met. The party making the reconsideration request is expected to be detailed and comprehensive in their written submission.

Application Procedure from Operations/Business Unit

If Operations/Business Unit is submitting the request, it too must be made in writing, outlining clearly the reasons for the request and referencing which of the standard of review criteria have been met. The parties must also be advised of the internal reconsideration request, through the provision of a copy of the detailed reconsideration request memo at the same time it is being forwarded to the ASD. The internal reconsideration request memo must be signed by the Operations Director and must be forwarded to the Vice-President of the ASD.

Reconsideration Process in the ASD – General Rules

The process involves two steps. It must first be decided whether it is appropriate to reconsider a decision by determining if one of the standard of review criteria have been met. This is the threshold test. If the threshold has been met, the person reconsidering the decision must determine if, even though the threshold has been met, it results in the decision being changed in a substantive way. This is referred to as the substantive review. If no grounds are found to warrant reconsideration, that is, if the threshold test has not been met, the parties will be advised in writing, with rationale and explanation provided. If grounds appear to exist, the person undertaking the reconsideration will notify both parties that the threshold has been met, and establish the procedures to be followed in conducting the reconsideration. The person responsible for the reconsideration has the ultimate authority to determine how best to conduct the reconsideration. There will be no opportunity to request a concurrent reconsideration at the various levels of reconsideration (ARO, Appeals Manager or Vice-President) until both the process to be followed in the reconsideration and the reconsideration itself have been fully completed.

In most cases, a reconsideration may be addressed through written submissions. Generally, the ASD will provide 30 days to make a written submission.

Following reconsideration by the ARO, the Appeals Manager or Vice-President may also be asked to reconsider the decision. The additional levels of reconsideration will not be undertaken automatically. Whoever asks an Appeals Manager or the Vice-President to reconsider a decision must make the request in writing and outline the standard of review criteria that have been met and the reasons for the request. The ARO's Manager and the Vice-President have the authority to reconsider and change a decision on the same grounds as noted above and will follow the same procedures as the AROs for dealing with reconsideration requests. This is not an additional level of appeal and is not intended to be used simply to substitute management's judgment for the judgment of the ARO.

Regardless of who in the ASD is reconsidering a decision, at the completion of the reconsideration review, the WPPs, the representatives (if any), and Operations will be notified of the outcome in writing, with reasons provided.

For reconsiderations requested in the usual manner related to the criteria of significant new evidence, typographical error, failure to apply WSIB policy, or a defect in the decision or decision-making process, the ARO decision will:

- remain valid on its face,
- remain on the claim file, and
- will be implemented by the operating area, if the ARO has directed action.

If the reconsideration results in a full or partial overturning of the decision, implementation will be reversed.

De Novo Decisions

Where the WSIB recognizes that there has been a significant procedural flaw that has rendered the appeals process fundamentally unfair, the WSIB will consider the ARO decision voidable, which means the defect can be corrected.

Where an ARO decision is considered voidable, the WSIB will:

- remove the original ARO decision from the claim file temporarily and replace it only after a second ARO decision has been made and communicated to the workplace parties
- conduct a "de novo" oral hearing or hearing in writing by a second ARO
- take no steps to interfere with the implementation of the original ARO decision, pending the outcome of the de novo process.

An example of a case where an appeals decision is considered voidable is where a party who has returned a completed Participant Form is mistakenly excluded from the appeals process.

The original ARO decision will be implemented pending the outcome of the de novo reconsideration process, subject to exceptional circumstances.

In cases where a fundamental process flaw has occurred and a de novo process is initiated, the ASD is committed to resolving these cases in a timely manner. Based on this, the timelines associated with the appeals process will apply. This will include timelines for the provision of forms and submissions, as well as the scheduling of oral hearings.

Exceptional Circumstances

There may be certain exceptional cases where it may be advisable to either place the implementation of the original ARO decision on hold or reverse the implementation because failure to do so would be very detrimental to the worker or employer.

The worker or employer must submit a written request to the Director of the ASD outlining why the implementation of the original ARO decision should be put on hold or reversed. The submission should outline the following:

1) What is or will be the significant harm to the party if the implementation of the original ARO decision is not put on hold or reversed?
2) Is the significant harm immediate or likely to occur at some future date? Because the de novo process will be actioned on a priority basis, the ASD is not likely to consider this criterion an exceptional circumstance if the harm is likely to occur at a time where the de novo process is likely to have been completed.

3) Is the party prepared and ready to move expeditiously to participate in the de novo process? If not, why not?

Examples where the ASD may direct that the implementation of the original ARO decision be put on hold or reversed are:

- A worker is scheduled for a 1-2 year college program in the near future and a de novo reconsideration cannot be completed prior to the start of the college program,
- A worker is experiencing urgent financial issues, such as bank foreclosure or eviction proceedings, and
- A worker is scheduled for surgery in the near future and needs loss of earnings benefits, but the original ARO decision denied entitlement for surgery.

Limit on Reconsideration Requests

Generally, only one reconsideration request should be made by each party at each level of reconsideration (the ARO, the ARO's Manager and the Vice-President). The ASD will not grant a further request for reconsideration from the same party made to the same individual unless there are exceptional circumstances (e.g., the failure to grant a subsequent reconsideration would result in a serious procedural or substantive unfairness to a party).

Reconsideration Time Limit

The ASD will not reconsider a decision after more than two years have passed since the date of the decision. Reconsideration requests made after two years will be undertaken only in exceptional circumstances, with those circumstances determined by the Vice-President, ASD.

Examples of exceptional circumstances include:

- the party requesting the reconsideration provides compelling reasons why the two year time limit was not met,
- in the opinion of the Vice-President, significant new evidence has been provided, significant evidence was overlooked by the original decision-maker, or there was a significant jurisdictional error committed, that would likely have changed the outcome of the decision.

PRACTICE GUIDELINE: Oral Hearing Fees and Expenses

When an oral hearing occurs, the ARO considers requests for the payment of expenses for the worker, the worker's witnesses and any summoned witnesses. Travel, meal and accommodation expenses are paid to workers, their witnesses and summoned witnesses who are required to attend hearings outside their area of residence or employment. All witnesses who are not summoned by the ASD must have their attendance pre-authorized by the ASD if they wish to be paid. Such requests should be made on the Appeal Readiness Form/ Respondent Form.

Employers and their witnesses are not entitled to the payment of hearing fees and expenses.

Travel expenses are limited to the equivalent of travel within Ontario borders. The ASD may pay for a portion of travel costs outside of the province. Generally, the WSIB will pay only from Winnipeg in the west and Montreal in the east, to the location of the oral hearing. If travel is from destinations farther away than either of these two cities, the travel costs will be limited to the equivalent of: the actual travel costs, or the cost of a return flight from either Montreal or Winnipeg and the oral hearing location, whichever is less.

AROs will attend to the various potential expenses/payment requests either during the preliminary discussion at the oral hearing or once the oral hearing has been closed.

Travel and Related Expenses

Allowances for travel, meals and accommodation expenses are paid at the prevailing rates established in the WSIB policy 17-01-09, Travel and Related Expenses.

Non-Professional Witness Fees

A witness fee, if there are lost wages, will be paid at a rate authorized by the ASD; a set amount for a half day and a set amount for a full day. A witness fee will not be paid to workers or their witnesses if:

- the worker is entitled to full WSIB benefits for the same day; or
- the worker/witness has been paid for the lost time by the employer; or
- the worker/witness suffers no wage loss while attending the hearing.

The expenses shall be recorded on a standard expense form which is to be signed by the party requesting the expenses and the ARO.

Professional Witness Fees

Professional witnesses will be paid a set fee as prescribed by the ASD. Professional witnesses include, amongst others, medical doctors, psychologists and physiotherapists. It is generally sufficient for the above individuals to provide medical reports to the ARO, and they will only be approved to appear at an oral hearing in unique circumstances where the evidence they intend to bring forward can only be effective if it is provided in person.

Witness Fee Schedule

Non-Professional witnesses: $110.96 for a full day/ $55.48 for a half day
Professional Witnesses: $600 for a full day/$300 for a half day

Payment for Medical Reports

Medical reports will be paid for at the approved WSIB fee schedule, if the report is provided by a party or representative as an attachment to the Appeal Readiness Form, but only if the report is deemed by the ARO to be significant in the decision-making process.

The approved fee schedule is set out in 17-02-03, *Payment of Clinical Assessments/Reports Requested for Adjudication.*

PRACTICE GUIDELINE: Use of Surveillance Material in the Appeals Services Division

This document is meant to supplement WSIB policy 11-01-08, *Audio Visual Recordings and 22-01-09, Surveillance.*

When resolving an issue in dispute, the ASD may accept video evidence from the WPPs or from the WSIB Regulatory Services Division (RSD) if the evidence is relevant and provides new or more complete information than is already on file.

Video evidence must be submitted, in an acceptable format, to the WSIB by the objecting party at the time of the provision of the Appeal Readiness Form, and by the respondent at the time they provide their submission to the ASD regarding both the substance of the appeal as well as the method of resolution.

It must be provided to the other WPPs at the same time it is provided to the ASD.

In exceptional circumstances only, the respondent will be permitted to provide the video evidence at least 30 days prior to the scheduled oral hearing date, and will be required to ensure that the other WPPs have a copy of the evidence.

Video evidence may be accepted in a variety of media formats. Parties submitting video evidence are responsible for ensuring the evidence is in a format that is accessible to all parties to the appeal.

See PRACTICE GUIDELINE on RULES OF DISCLOSURE AND WITNESSES on page 45 for guidance on the disclosure timelines for surveillance material.

In all cases, the evidence must be authenticated, through a signed statement from the author confirming the date, time and location of the video, that it has not been altered, and that the video is a true representation of its subject. If the ASD receives evidence that is not accompanied by such a signed statement, the ASD will return the evidence and ask that it be authenticated and re-submitted.

If the decision is based in whole or in part on surveillance evidence but the identity of the subject of surveillance is contested, a detailed investigation by RSD can be undertaken at the request of the ASD.

If the video evidence is to be used in an oral hearing, the ARO should view the evidence in advance of the hearing and seek agreement with the parties about what sections of the video are most relevant. Consensus should be sought as to whether actual viewing of the video during the hearing is necessary and if so what sections will be viewed. Often, an agreement can be reached that if the parties have all viewed the video in advance it will not be necessary to view it again in the oral hearing.

When video evidence is to be used in an oral hearing the Coordinator must be advised at the time of booking the hearing that audio visual equipment will be required.

PRACTICE GUIDELINE: Experience Rating Adjustments – Exceptional Circumstances

Retroactive experience rating adjustments may be presented as a "stand alone" issue in an appeal after Second Injury and Enhancement Fund (SIEF) relief has been granted.

As a result, it is important for decision makers to have regard for the experience rating window when deciding if SIEF cost relief is to be applied.

However, there may be circumstances where retroactive adjustments to SIEF relief occur after the closure of the experience rating window.

WSIB policy outlines that adjustments outside of the experience rating window can occur if the WSIB has made an error. Errors are defined as:

- Clerical (typographical)
- Data processing (computer generated)
- Omission (decision made but not acted upon)

It is important to distinguish the above circumstances from delays that result from the appeals process. The fact that an ARO grants SIEF relief on appeal outside of the experience rating window does not in itself make it a WSIB "error" that would give rise to an experience rating adjustment.

The ASD has developed the following guideline when considering employer appeals where exceptional circumstances may exist.

Circumstances that may constitute "exceptional circumstances" include but are not limited to:

- Whether the employer pursued SIEF relief within a reasonable period after the employer knew or ought to have known the worker's recovery period was prolonged or enhanced by a pre-existing condition.
- Whether there was a delay in identifying a pre-existing condition.
- Whether undue delay in the decision-making process caused the decision to grant SIEF relief to fall outside the experience rating window.
- The length of time between the closure of the experience rating window and the SIEF decision. It would be expected that discretion be extended in cases where the period is relatively short (i.e., less than six months).

When an ARO is deciding on the experience rating adjustment as part of an SIEF appeal, the ARO must be aware of the appeal time limit for the experience rating adjustment, if a decision has been made by Operations relating to that issue. In cases where the above rule of practice is applied, a copy of the ARO decision should be sent to the Manager of Experience Rating.

PRACTICE GUIDELINE: Publication of ARO Decisions

Some ARO decisions are published on the website for the Canadian Legal Information Institute (CANLii) to enhance education as well as openness and transparency in the ASD decision-making process.

Published ARO decisions are anonymized and do not include any personal identifying details.

The ASD will not publish decisions in circumstances where a risk of identification exists or where the issues are of such a sensitive nature that it would not be appropriate to do so.

Please see www.canlii.org for published decisions.

PRACTICE GUIDELINE: Employer Account Appeals

This guideline is provided for the purposes of outlining any differences in the *Appeals Services Division Practice & Procedures* (P & P) document specifically related to employer account appeals. Unless differences are referenced specifically throughout the P & P, the regular guidelines will apply.

Adverse Decision

When an adverse decision regarding an employer account issue is made by a front- line decision maker, they will communicate that decision verbally, when possible, and in writing. The written decision will invite the WPP that received the adverse decision to provide any additional information that might alter the decision, and will also advise the party of the time limit to object to the decision. **SEE PRACTICE GUIDELINE on TIME LIMIT TO OBJECT on page 7.**

If concerns are raised about the decision, the front-line decision maker will review the concerns with the workplace party, explain the rationale for the decision and address any new information that may be provided. If the decision is not changed, the WPP can then proceed with their objection.

Objection Form

The WPP is required to complete an Objection Form that is issued to them by the front-line decision maker, and return it to the decision-maker if they choose to proceed with an objection.

Note: the Objection Form for employer account appeals is different than the Intent to Object Form used for other appeals.

The completed Objection Form must specify reasons why the decision is considered to be incorrect, any new information not considered by the decision-maker, and a summary of what is requested related to the Employer's account. If the Objection Form is not completed in full, the referral to the ASD may be delayed.

Once the Objection Form is completed, the front-line decision maker forwards an Appeals Referral Memo to the ASD.

Access

Firm file access is provided upon request through the firm file access area. **SEE THE PRACTICE GUIDELINE on INTENT TO OBJECT – HANDLING BY OPERATIONS on page 4.**

Appeal Registration and Review Stage

Once the appeal is registered in the ASD, the Coordinator will review for completeness and assign to an ARO to determine method of resolution.

Method of Resolution

For employer account appeals, the WSIB decision on method of resolution is an administrative decision made by the ARO. A request for reconsideration of this decision may be made to the ARO. There will be no opportunity to request reconsideration by an Appeals Manager, Director or the Vice-President. The ARO will contact the party to inform them of the method of resolution and, in the case of a hearing in writing, will provide the party a due date for any further submissions. The due date will be 30 days plus 5 days for mailing.

For more information on how employer account appeals are generally dealt with in terms of method of resolution, **SEE LISTS on page 21 and 22**.

Hearing in Writing:

An ARO will make a decision in these cases based on a review of the information contained in the record along with any new submissions provided. The ARO will generally complete the decision within 45 days once the submission due date has passed.

Oral Hearing:

If the WSIB determines that an oral hearing is required, it will generally be convened with 90 days. At the oral hearing, the WPP will have an opportunity to present their case. The ARO will generally complete the decision within 45 days from the date the hearing is completed.

APPENDIX A

APPLICATION OF TIME LIMIT EXTENSION CRITERIA

Criteria between January 1, 2008 and January 31, 2013
(For Employer Account Appeals this applies from January 1, 2008 to June 30, 2016)

- The length of the delay. Broad discretion to extend will be applied where appeals are brought within one year of the date of the decision. Additional criteria to be considered for longer delays include:
  - Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
  - Whether there was actual notice of the time limit. This acknowledges that post '98 decisions specifically refer to the time limits but pre'98 decisions do not;
  - Whether there are other issues in the appeal which were appealed with the time limits and which are closely related to the issues not appealed within the time limits;
  - The significance of the issue in dispute;
  - Whether the party was able to understand the time limit requirements.
- All decisions to extend time limits will be based on the merits and justice of the case.

Criteria between February 1, 2013 and June 30, 2016

- Criteria to be considered for objections beyond the statutory time limit include:
- Whether there was actual notice of the time limit. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
- Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
- An organic or non-organic condition that prevents the worker from understanding the time limit and/or meeting the time limit;
- Whether there are other issues in the appeal that were appealed within the time limit which are so intertwined that the issue being objected to within the time limit cannot reasonably be addressed without waiving the time limit to appeal on the closely related issue.

All decisions to extend the time limits will be based on the merits and justice of the case.

Criteria as of July 1, 2016 (including Employer Account Appeals)

Criteria to be considered for objections beyond the statutory time limit include:

- Whether there was actual notice of the time limit. This acknowledges that as of January 1, 1998, decisions specifically refer to the time limits but prior to that date, they do not;
- Serious health problems (experienced by the party or the party's immediate family) or the party leaving the province/country due to the ill health or death of a family member;
- An organic or non-organic condition that prevents the worker from understanding the time limit and/or meeting the time limit;
- Whether there is clear documentation in the claim file that the party was disputing the issue(s) in a particular decision even though a formal notice of objection was not filed (direct correspondence or memo outlining a telephone discussion about the particular issue);
- Whether there are other issues in the appeal that were appealed within the time limit which are so intertwined that the issue being objected to within the time limit cannot reasonably be addressed without waiving the time limit to appeal on the closely related issue.

APPENDIX B

KEY CHANGES TO PAST APPEALS SERVICES DIVISION PRACTICE AND PROCEDURES DOCUMENTS

Effective July 1, 2016

The Appeals Services Division (ASD) continues to enhance services for our clients. In 2016 our improved services include fewer touch points for clients and early, substantive decision making during the intake of an appeal. These service improvements have been accomplished through the implementation of two new roles within the Division: Appeals Coordinator and Appeals Registrar. By offering enhanced services to clients, the new positions will reduce downstream
impacts such as appeals being withdrawn or returned to Operations, and unrepresented workers and employers will have greater opportunity to discuss the appeals process with the Appeals Registrar at the beginning of the process.

The Division has also made updates to the *Appeals Services Division Practice & Procedures Document* to make it more accessible, and to include more detailed information about employer account appeals. The key changes to the Practice and Procedures Document are highlighted in the chart below:

Issue	Description	Page(s)
Overall document formatting	• The Practice and Procedures document is now formatted for increased accessibility purposes. As a result of these format changes, most page references are changed and the document is longer.	**All**
Role Change: Appeals Coordinator	• The Hearings Scheduler role has been expanded to a new role called Appeals Coordinator. This role update is explained on page 22 and is reflected throughout the document as appropriate.	**22 to 23**
Role Change: Appeals Registrar	• The Appeals Administrator role has been expanded to a new role called Appeals Registrar. This role update is explained on page 22 and is reflected throughout the document as appropriate.	**22 to 23**
Role Change: Executive Director	• The Executive Director role has changed. There is now both a Vice-President and a Director role within the Appeals Service Division. This role update is reflected throughout the document as appropriate.	**All**
Time Limit	• The Time Limit to Object to re-employment decisions has been clarified as being 30 days, not 6 months. • Employer account appeals are now included, and noted as having a 6-month Time Limit to Object. • An additional criterion has been added when considering objections beyond statutory time limits, that takes into account whether there is clear documentation of the party disputing the issue on the claim file. • An Appeals Resolution Officer no longer makes decisions regarding time limits to object. These decisions are now made by an Appeals Registrar.	**7**

APPENDICES

Issue	Description	Page(s)
Criteria for Hearings in Writing (HIW) vs Oral Hearings (OH)	▪ The Appeals Registrar will make a determination on HIW or OH when a party has requested an OH. ▪ The Appeals Registrar will also make a determination on the number of witnesses to attend the OH.	**17, 22**
HIW list updated	▪ Employer account appeal issues are included. ▪ Disablement with no factual dispute is included.	**19 to 20**
Hearing Scheduling	▪ The Appeals Coordinator replaces the Hearings Scheduler function. The Appeals Coordinator will be confirming any video evidence at the time of the OH booking.	**27 to 28**
Summonses and Production of Documents	▪ The Appeals Coordinator replaces the Appeals Administrator function.	**30 to 31**
Postponements	▪ The Appeals Registrar replaces the Appeals Administrator function. ▪ The Appeals Coordinator replaces the Hearings Scheduler function.	**33 to 34**
Interpreters	▪ Requests for interpreters subsequent to submission of the Participant Form or the Respondent Form are now made through the Appeals Coordinator. ▪ As interpreters hired by the WSIB carry professional status, they will no longer be sworn in during OH.	**29, 36**
Failure to Attend Oral Hearing	▪ The Appeals Registrar replaces the Appeals Administrator function.	**41**
Rules of Disclosure and Witnesses	▪ The Appeals Registrar replaces the Appeals Administrator function.	**43 to 45**
Withdrawals	▪ The Appeals Registrar replaces the Appeals Administrator function. ▪ 3rd withdrawal requests must be in writing to the Vice President.	**48**
Reconsiderations	▪ Increased days for written submissions from 21 days to 30 days. De Novo Process changes are made.	**50 to 52**
Use of Surveillance Material	▪ Further clarity provided regarding requirement to share surveillance submissions with other WPPs at the same time it is provided to the ASD, and that only in exceptional cases will it be accepted within 30 days of a Hearing. ▪ The Appeals Coordinator replaces the Hearings Scheduler function.	**56**
Employer Account Appeals	▪ Practice Guidelines for employer account appeals are now included, and are reflected throughout the document as appropriate.	**59**

Effective January 1, 2017

In this version we outlined important information regarding past decisions and the Time Limit to Appeal, and continued improvement of overall document formatting.

Issue	Description	Page(s)
Overall document formatting	▪ The Practice and Procedures document is now formatted for increased accessibility purposes. As a result of these format changes, many page references are changed, the document is longer and includes APPENDICES that reflect key past changes.	**All**
Time Limit to Appeal	▪ The criteria related to the extension of the time limit to object that were in place at the time of the operating area decision on the time limit, should be applied. Appendix A includes the criteria and relevant time frames associated with those criteria.	**7, APP. A, page 61**

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Effective January 1, 2018