



## APPEALS TRIBUNAL GUIDELINES

### General

1. As a direct request of a worker, dependent, employer or association, a decision made by an officer or officers under the Workers' Compensation Act or the Occupational Health and Safety Act can be appealed to the Appeals Tribunal.
2. An officer of the Appeals Tribunal, after reviewing the issue being appealed, may offer to the appellant and other parties involved one of the following options:
  - a Hearing (Oral Presentation or Paper Review) panel consisting of the Chairperson or Vice-chairperson and two other members of the Appeals Tribunal.
  - a Hearing (Oral Presentation only) panel consisting of the Chairperson or Vice-chairperson acting alone subject to the consent of all parties.
3. An officer of the Appeals Tribunal shall have an Appeal Record prepared containing a summary of facts relevant to the appeal including any written decision(s) and copies of relevant documents.
4. Any party to the appeal will be provided with a copy of the Appeal Record prepared by the Appeals Tribunal in pursuing the appeal.
5. Any party to the appeal may request the Appeals Tribunal to add documents to the Appeal Record and copies of such documents shall be made available to the parties to the appeal.
6. Facts rebutting any added document may be added to the Appeal Record. Any added document(s) or fact(s) rebutting any added document(s), which in the opinion of an officer of the Appeals Tribunal is new evidence, shall result in the matter being referred to the original decision maker. Should the original decision not change, the matter shall revert to the appeal option originally chosen.

7. The Chairperson of the Appeals Tribunal may request any investigation in relation to the appeal including interviews of the parties or other persons and may obtain the opinions of any expert whom the Chairperson believes may assist in the consideration of the appeal. The results of these investigations or consultations shall be documented and added to the Appeal Record.
8. The Chairperson shall designate an officer of the Appeals Tribunal who will advise the parties of the details of the arrangements made in proceeding with the appeal.
9. The Appeals Tribunal is subject to the Workplace Health, Safety and Compensation Commission Act, the Workers' Compensation Act and the Occupational Health and Safety Act and shall apply every written decision of the Board/Commission or Board of Directors interpreting the WHSCC Act; the WC Act or the OHS Act including Resolutions, Board Orders or Board/Commission Policies.

### **Hearings**

10. Any party to the appeal may appear on the day the appeal is to be considered and make oral submissions.
11. Where a Paper Review is held, the Appeals Panel will consider and decide the appeal on the basis of the Appeal Record and any written submissions made by the parties to the appeal.
12. Where an Oral Presentation is held, the Appeals Panel will consider and decide the appeal on the basis of the Appeal Record, the oral and documentary evidence presented and any submissions made by the parties to the appeal.
13. Where Notice of an Oral Presentation has been forwarded to a party and the party does not attend at the Hearing, the Appeals Panel may proceed in the absence of the party.
14. The Chairperson or a Vice-chairperson of the Appeals Tribunal shall preside over the Hearing of an appeal and shall conduct the proceedings informally.
15. The Chair may make such order or give such directions at the Hearing as is necessary for the maintenance of order at the Hearing.
16. Disputes on what evidence should be heard by the Appeals Panel or what procedure should be followed at the Hearing shall be decided by the Chair. The Chair's decision shall be conclusive and final.

17. (1) A party to an appeal may
    - (a) be represented by an advocate or an agent,
    - (b) call and examine witnesses,
    - (c) conduct cross-examinations of witnesses who testify at the Hearing if the Chair decides that such cross-examinations are reasonably required for a full and fair disclosure of the facts in relation to which the witnesses have given evidence, and
    - (d) present his arguments and submissions to the Appeals Panel.
  - (2) Any member of the Appeals Panel may examine and cross-examine any witness at the Hearing.
  - (3) The Chair may reasonably limit further cross-examination of a witness where the Chair is satisfied that the cross-examination has been sufficient to disclose fully and fairly the facts in relation to which the witness has given evidence.
18. (1) The Chair of the Appeals Tribunal may by Summons, require any person who resides in New Brunswick:
    - (a) to give evidence on oath or affirmation, and
    - (b) to produce in evidence at a Hearing specified documents and things, which are relevant to the appeal.
  - (2) Any Summons to witness shall be served personally on the person summoned who shall be:
    - (a) reimbursed for travel, meals and accommodation on the same basis as approved by the Commission for travel, meals and accommodation incurred by injured workers for claim-related purposes;
    - (b) paid attendance fees as a witness or expert witness as fixed for a witness summoned to attend the Court of Queen's Bench.
  - (3) A party to an appeal may request the Chair to summon a witness who resides in New Brunswick to attend at the hearing and to produce

specified documents and things, provided that the request is made in writing to the Appeals Tribunal at least 21 days before the Hearing is to be held.

- (4) Any member of the Appeals Panel may require the Chair to summon a witness who resides in New Brunswick to attend the Hearing and to produce specified documents and things.
  - (5) Notwithstanding section 18(1), (2), (3) and (4), the Chair of the Appeals Tribunal will only subpoena a witness where it is necessary for resolution of the case on its real merits as contemplated by section 21(9) of the Workplace Health, Safety and Compensation Commission Act and therefore:
    - (a) merit for the issuance of a summons must be established to the satisfaction of the Chair;
    - (b) the party submitting a request for summons must identify the issue that requires evidence or clarification to the satisfaction of the Chair;
    - (c) a summons will not be issued for Members of the Legislative Assembly (MLA) unless it is determined by the Chairperson of the Appeals Tribunal that an exceptional circumstance exists requiring oral testimony. The party requesting a summons for an MLA must, in writing, establish to the satisfaction of the Chairperson that written testimony cannot provide a proper explanation of the factual circumstances as known by the MLA in question.
    - (d) when a witness appears before an Appeals Panel, the evidence will be elicited by the Chair of the Appeals Panel, which evidence shall be subject to question and clarification, as directed through the Chair by the parties to the appeal and the members of the Appeals Panel;
19. (1) The Chair may admit as evidence at the Hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
- (a) any oral testimony, and
  - (b) any document or other things,

which are relevant to the appeal, and the Appeals Panel may act on such evidence and attribute to it the weight it decides is appropriate.

- (2) Where the Chair is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at the Hearing.
- (3) Written submissions advocating the position of any party to a hearing and provided by an MLA shall not be accepted at a hearing. An MLA may submit a new letter to the Appeals Tribunal for use at a hearing outlining facts within his or her knowledge that may be relevant to the Tribunal's deliberations. Any new letter shall be submitted to the Appeals Tribunal in accordance with section 37 of the Guidelines, or it shall be subject to review by an Appeals Panel under section 38 of the Guidelines.

Any letter, document or other materials submitted by an MLA, whether included in an Appeal Record, submitted to the Appeals Tribunal in accordance with section 37 or considered by an Appeals Panel pursuant to section 38 shall meet the content requirements established for new letters set out in these Guidelines. The chairperson of the Appeals Panel presented with the letter, document or other material shall rule on its admissibility and determine how the Panel shall deal with that evidence in accordance with section 16 of the Guidelines.

20.
  - (1) At the Hearing, the appellant shall submit his/her evidence first and each respondent shall then submit his/her evidence. On the close of evidence of all parties, each party may address the Appeals Panel, however, the appellant will be provided with the right of last reply.
  - (2) The Chair may call witnesses summoned by the Appeals Panel to testify in whatever order during the Hearing that the Chair believes to be proper.
21. The Chair may adjourn the Hearing from time to time where the Appeals Panel is satisfied that an adjournment is necessary to ensure a proper appeal.
22. Proceedings at the Hearing shall be recorded, and a transcript shall be provided on request of any party to the appeal provided that an undertaking to pay the costs of transcription is provided by the party requesting the transcript.
23.
  - (1) The hearing shall be conducted in either of the official languages (English or French) of the Province of New Brunswick as chosen by the appellant. Any party to the appeal requiring an interpreter to translate the evidence or proceedings from one official language to the other

official language shall make that request to a designated officer of the Appeals Tribunal as soon as possible before the Hearing.

- (2) Any party to the appeal and any witness testifying at the Hearing in his/her mother tongue who requires an interpreter to translate the evidence or proceedings or hearing into the language in which the Hearing is to be conducted, shall make that request to a designated officer of the Appeals Tribunal as soon as possible before the Hearing.
24. (1) The appellant has the onus to establish his/her case to the satisfaction of the Appeals Panel, and the appellant is responsible for submitting all evidence necessary to meet that onus.
    - (2) Each party to the appeal is responsible for submitting all evidence necessary to support his/her assertions.
  25. The Decision of the Appeals Panel shall be certified by the Chair. A copy of the Decision will be forwarded to each party in the appeal.
  26. The Chair may vary these rules on any appeal, or make additional rules, if the Chair believes that in the circumstances of the case, changes are necessary to ensure that the appeal is conducted and considered fairly on its merits.
  27. The Chair may make such orders or give such directions as the Chair considers proper to prevent abuse of the appeals process.

### **Reconsideration**

28. A matter previously decided by means of a Hearing may be reconsidered when new evidence is submitted which is judged to be sufficiently substantial that it may affect a previously reached Decision.
  - i) A request for reconsideration of an Appeals Tribunal decision shall be reviewed only upon the expiry of the 30-day time limit to request a statement of the facts.
  - ii) If a party has requested a statement of the facts and is proceeding to the Court of Appeal of New Brunswick, a request for reconsideration shall not be reviewed until such time as the Court of Appeal has rendered its decision on the matter or that the Appeals Tribunal has received notification in writing by the party appealing that the appeal before the Court has been discontinued.

- iii) A request for reconsideration shall not be reviewed if any party, who is affected by a decision of the Court of Appeal of New Brunswick, has indicated an intention to appeal to the Supreme Court of Canada. As in subsection ii), the request for reconsideration will only be reviewed upon notification in writing that the appeal has been discontinued or the appeal has run its course and the decision rendered.
29. The Chairperson of the Appeals Tribunal or designate will decide whether the new evidence is sufficiently substantial to warrant a reconsideration of a previous Decision. The parties involved will be informed of the decision respecting the new evidence and if applicable, the ensuing process to be followed.
30. Where reconsideration is warranted, the matter will be referred to a Hearing consistent with the option through which the Decision being reconsidered was initially reached.

### **Postponements**

31. A postponement may occur when a Hearing date has been set and, either prior to the Hearing or on the date of the Hearing, it is requested that the Hearing be deferred to a later date and such request is granted.
32. Requests for a postponement shall fall into two categories, namely:
- (i) **Exceptional Circumstances** which include illness, death and adverse weather conditions.
  - (ii) **General Circumstances** which include all other circumstances such as timetable conflicts, acquiring additional information, etc.

The Chairperson of the Appeals Tribunal or delegate shall be the sole arbitrator of whether or not a request for postponement is an Exceptional or a General Circumstance.

33. A Hearing postponed under Exceptional Circumstances will be rescheduled at the next earliest date. A Hearing postponed under General Circumstances will be treated as a new appeal and will return to the beginning of the appeal scheduling process.
34. The appellant or representative may request a postponement at any time. However, excluding Exceptional Circumstances, the other party is not entitled to

request a postponement where a Notice of Hearing postmarked thirty calendar days prior to the hearing date has been issued.

35. Requests for a postponement are to be made in writing stating the reasons for the request and copies are to be provided to all parties involved.
36. The Appeals Tribunal may determine that an appeal should be postponed. In these cases, the appeal will be rescheduled at the next earliest possible date.

### **New Documentary Information**

37. At least three (3) weeks prior to the Hearing date all parties are required to submit to the Appeals Tribunal a copy of any new documents or reports that the parties want the Appeals Panel to consider at the appeal.
38. The Appeals Panel shall decide whether or not to accept at the Hearing any document previously not available prior to the three (3) weeks set forth in paragraph 37.

### **Witnesses**

39. At least three (3) weeks before the Hearing date, the Appeals Tribunal must be advised in writing of any witnesses that will be at the Hearing. The list will include the name(s) and the purpose in having the witness attending the Hearing.

An MLA may not attend as a voluntary witness or as an observer to an Appeals Tribunal hearing prior to obtaining confirmation from the Chairperson of the Appeals Tribunal at least 21 days before the hearing is to be held that exceptional circumstances exist which would make his/her appearance permissible. Failure to obtain a confirmation from the Chairperson of the Appeals Tribunal may result in the hearing being postponed or a hearing decision being rendered void and a new hearing rescheduled at the next available opportunity.