

## **APPEALS TRIBUNAL GUIDELINES**

1. "Chairperson of the Workers' Compensation Appeals Tribunal" (the "Chairperson") means the Chairperson appointed under the *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act* (the "Act") or such official as may be delegated to act on his behalf.

### **General**

2. On a written request of a worker, dependent, employer or association, a decision made by an officer or officers of the Workplace Health, Safety and Compensation Commission (the "Commission" or "WHSCC") under the *Workers' Compensation Act*, the *Firefighters' Compensation Act* or the *Occupational Health and Safety Act* can be appealed to the Workers' Compensation Appeals Tribunal (the "Appeals Tribunal") established under the the *Act*. The Commission shall have standing in any appeal to the Appeals Tribunal in accordance with the *Act*.
3. The Chairperson, after reviewing the issue being appealed, shall decide if the appeal is to proceed by way of oral hearing, including in person, by video or telephone conference or can be properly disposed of by way of written submissions and shall choose one (or in exceptional circumstances two or more members of the Appeals Tribunal) to hear the appeal in the format decided upon by the Chairperson. This decision may be reviewed in accordance with the procedure set out in subsections 21(4.3) and 21(4.4) of the *Act*.
4. Any party to the appeal will be provided with a copy of the Appeal Record prepared by the Appeals Tribunal prior to the date scheduled for the hearing of 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 the Chairperson is new evidence, may result in the matter being referred to the original decision maker. If the matter is so referred and the original decision does not change, the matter shall revert to the appeal option originally chosen.

7. The Chairperson shall designate an officer of the Appeals Tribunal who will advise the parties of the details of the arrangements, including scheduling, made in proceeding with the appeal.
8. The Appeals Tribunal is subject to the *Act* and the Chairperson shall report to the Minister of Post-Secondary Education, Training and Labour as may be directed by the Minister.

### **Hearings**

9. For purposes of the Hearings portion of the *Guidelines*, reference to the “Chairperson” shall mean the Chairperson or designated Vice-Chairperson of any appeal.
10. Any party to the appeal may appear on the day the appeal is to be considered and make oral submissions.
11. Where a hearing other than an oral hearing is held, the Chairperson 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 hearing is held, the Chairperson shall 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 Hearing has been forwarded to a party and the party does not attend at the hearing, the Chairperson may proceed in the absence of the party.
14. The Chairperson shall preside over the hearing of an appeal and shall conduct the proceedings informally.
15. The Chairperson may make such order or give such directions at the hearing as is necessary for the maintenance of order and efficient functioning of the hearing. If more than one Chairperson is designated to hear an appeal, one such Chairperson shall be designated as Chairperson of the hearing.

16. Disputes on what evidence should be heard or what procedure should be followed at the hearing shall be decided by the Chairperson. The Chairperson's decision shall be conclusive and final.
17. (1) A party to an appeal may
  - (a) be represented by an advocate, an agent or counsel,
  - (b) call and examine witnesses,
  - (c) conduct cross-examinations of witnesses who testify at the hearing if the Chairperson 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 or her arguments and submissions to the Chairperson.
- (2) The Chairperson may ask questions of any witness at the hearing.
- (3) The Chairperson may reasonably limit further cross-examination of a witness where the Chairperson is satisfied that the cross-examination is not relevant to the issue under consideration.
18. (1) The Chairperson may by summons, in the form approved by the Appeals Tribunal, at the request of a party 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 shall be served personally by the party calling the witness.
- (3) A party serving a summons shall pay the person served fees for attendance, travel and expenses in accordance with the Rules of Court of New Brunswick.
- (4) A party to an appeal may request the Chairperson to summons 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 seven

(7) days before the hearing is to be held or such shorter period of time as is just in the circumstances.

- (5) Despite section 18(1), (2), and (3), the Chairperson will only summons a witness where it is necessary for resolution of the case on its real merits as contemplated by subsection 21(9) of the *Act* and therefore:
- (a) merit for the issuance of a summons must be established to the satisfaction of the Chairperson;
  - (b) the party submitting a request for summons must identify the issue that requires evidence or clarification to the satisfaction of the Chairperson;
  - (c) a summons will not be issued for Members of the Legislative Assembly (MLA) unless it is determined by the Chairperson 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.

19. (1) The Chairperson 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 Chairperson may act on such evidence and attribute to it the weight deemed appropriate.

- (2) Where the Chairperson 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 Appeals Tribunal's deliberations. Any new letter shall be submitted to the Appeals Tribunal in accordance with section 34 of the *Guidelines*,

or it shall be subject to review by the Chairperson under section 35 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 34 or considered pursuant to section 35 shall meet the content requirements established for new letters set out in these *Guidelines*. The Chairperson presented with the letter, document or other material shall rule on its admissibility in accordance with section 19 of the *Guidelines*.

20. 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 Chairperson; however, the appellant will be provided with the right of last reply.
21. The Chairperson may adjourn the hearing from time to time where he/she 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 and such payment is received by the Appeals Tribunal prior to the delivery of the requested 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 an officer of the Appeals Tribunal as soon as possible before the hearing and in any case not later than thirty (30) days prior to 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 an officer of the Appeals Tribunal as soon as possible before the hearing and in any case not later than thirty (30) days prior to the hearing.

24. (1) The appellant has the onus to establish his/her case to the satisfaction of the Chairperson, and the appellant is responsible for submitting all evidence necessary to meet that onus.
24. (2) Each party to the appeal is responsible for submitting all evidence necessary to support his/her assertions.
25. A copy of the Chairperson's written decision will be forwarded to each party in the appeal not later than ninety (90) days from the date of the hearing.
26. The Chairperson may vary these rules on any appeal, or make additional rules, if the Chairperson 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 Chairperson may make such orders or give such directions as the Chairperson considers proper to prevent abuse of the appeal process.

### **Postponements**

28. A postponement may occur when a hearing date has been set and, either prior to or on the date of the hearing, it is requested that the hearing be deferred to a later date and such request is granted by the Appeals Tribunal.
29. 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 including timetable conflicts and acquiring additional information.

The Appeals Tribunal shall determine whether or not a request for postponement is an Exceptional or a General Circumstance.

30. 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.
31. The appellant or his/her representative may request a postponement at any time. Excluding Exceptional Circumstances, other parties shall not be entitled to request a postponement after a Notice of Hearing

postmarked thirty (30) calendar days prior to the hearing date has been issued.

32. Requests for a postponement are to be made in writing stating the reasons for the request with notice to all parties involved.
33. 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**

34. For the purposes of preparing the Appeal Record, all parties are required to submit to the Appeals Tribunal a copy of any new documents or reports that the parties wish considered at the appeal no later than fourteen (14) days prior to the hearing date.
35. The Chairperson or Vice-Chairperson presiding at the hearing shall decide whether or not to accept at the hearing any document previously not available prior to the fourteen (14) days set forth in paragraph 34.

### **Witnesses**

36. Not later than ten (10) days 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 at least ten (10) 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 may result in the hearing being postponed or a hearing decision being rendered void and a new hearing rescheduled at the next available opportunity.