

Workers' Compensation Appeals Tribunal – Protocols/Best Practices

General Information

On March 16, 2020, the Workers' Compensation Appeals Tribunal (WCAT) postponed in-person hearings to support the province-wide effort to stop the spread of COVID-19. Alternative hearing methods are now being offered to parties to prevent undue delay in having their matters resolved by WCAT. These alternative hearing methods include telephone conference, video conference, or written submissions. In-person hearings will be offered in exceptional circumstances and will be decided on a case by case basis.¹

This document is meant to supplement WCAT's existing *Appeals Guidelines*.² The document is meant to be flexible, and will apply to all new matters, as well as to hearings which began before the COVID-19 Pandemic. During this time there is a recognized need for flexibility with hearing processes, and WCAT will work with the parties to adapt the hearing process to the specific circumstances of each case.

During any WCAT hearing, parties and their representatives are expected to abide by all public health guidelines for the period of the COVID-19 Pandemic.

This document will be updated as necessary, including on the advice of the Department of Health, and/or Office of the Chief Medical Officer of Health, and/or the Department of Public Safety, and in response to the evolution of the COVID-19 Pandemic.

I. Protocols/Best Practices: Telephone Conference or Video Conference

Hearing Information for Representatives, Parties and WorkSafeNB

This section provides guidance on the use of telephone conference and video conference for:

1. Appeals before WCAT;
2. Pre-conference proceedings before WCAT.

The chairperson assigned to your case will ultimately decide if and how the hearing or pre-hearing conference will be conducted.

¹ *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act*, subsection 21(4.2).

² <https://nbwcat-taatnb.ca/sites/default/files/2020-10/2020%20WCAT%20Guidelines.pdf>

WCAT appreciates that parties and/or representatives may have interruptions in their home environment during a telephone conference or video conference hearing. Please feel free to ask for a break if needed for any reason.

Before the Hearing

1. Information needed to participate in a telephone conference or video conference hearing

Hearings that proceed by telephone conference alone will be audio hearings using telephones.

Hearings that proceed by video conference will use telephones for the audio aspect of the hearing and will use Zoom for the visual aspect of the hearing. If for any reason the Zoom platform does not function, the chairperson may convert the hearing into a telephone conference hearing so that the hearing can proceed (subject to the discretion of the chairperson).

WCAT will send a Notice of Hearing to the parties as soon as practicable in advance of the hearing. Arrangements for the telephone conference call aspect of the hearing will be made through the scheduling coordinator.

The Notice of Hearing will include such important information as the date and start time of the hearing and how to join and participate in the telephone conference or video conference hearing. **Parties and representatives should follow the instructions on the Notice of Hearing to connect to the telephone conference.**

On the day of the hearing, please set up 30 minutes prior to the scheduled hearing time to ensure that the video conference and telephone equipment is working, your room is set up appropriately and there are no connectivity issues.

At least 10 minutes before the start of the hearing, participants should call into the telephone conference, using the number provided on the Notice of Hearing. For video conference hearings, all participants should go to the Zoom website (zoom.us) and join the hearing with the video conference information provided by WCAT. The Chairperson will admit you to the video conference. This will establish the video conference visual aspect of the hearing.

For privacy reasons, it is important that the dial-in and/or sign-in information for the telephone conference or video conference hearing is not shared with any individuals who are not legitimately participating in the hearing.

2. Representatives responsibility

Representatives are responsible for explaining the telephone conference and/or video conference hearing processes to their clients.

Representatives are responsible to ensure their clients have a working computer with a web cam and/or a telephone available for a video conference hearing, and a working telephone for a telephone conference hearing, as well as ensure they can successfully connect (see also #6. below).

3. Assistance from WCAT

Telephone conference and Video conference: Any participant who has questions about how to participate in a telephone conference or video conference may contact the scheduling coordinator for assistance in advance of the hearing.

If a participant has any difficulties contacting the scheduling coordinator, the participant may also contact WCAT directly at 1-844-738-6444, 8:00 a.m. to 5:00 p.m., Monday to Friday, and after hours by leaving a message.

Participants will be required to provide telephone numbers and email addresses to WCAT.

4. Privacy and Security in a Zoom video conference

WCAT suggests that Zoom participants review the Zoom's terms of use prior to the hearing, which are available online (zoom.us).

To improve privacy and security, appropriate safeguards have been put into place by WCAT. When participants enter the Zoom meeting, they will be placed into a Zoom virtual waiting room. Once the hearing starts and all parties are confirmed as being in attendance, the Zoom host (usually the chairperson) will only admit individuals participating in the hearing. The audio portion of the hearing will proceed by telephone conference, and not through Zoom, which provides an additional level of security.

To further improve privacy and security, a few Zoom features will be disabled, including: screen share, video/audio recording, and the 'chat' functionality.

Notwithstanding these safeguards, there is always a small risk that confidential information communicated in an electronic hearing may be compromised. At the beginning of an electronic hearing, the chairperson will remind parties that WCAT has made reasonable efforts to protect the parties and put into place additional safeguards.

5. Participants should be prepared for the telephone conference or video conference hearing

For a telephone conference hearing, participants should make sure that they have the tools available to participate in the telephone conference, including a working telephone. Participants using a cell phone should also have chargers on hand.

For a video conference hearing, participants should make sure that they have the tools available to participate in the video conference, including access to high-speed internet service, a laptop charger if necessary, and a computer with a web cam or a smart phone. Participants using laptops should have power cords on hand. For the audio portion of the hearing, parties and representatives should also make sure that they have access to working phones and, if using cell phones, have chargers on hand.

- Technical requirements for participation in a Zoom hearing include:

High speed internet connection. Participants must have access to a high-speed broadband wired or wireless internet connection. Wired connections are recommended.

Smart phone or computer with functioning webcam. Parties should test the video quality of their webcams prior to the scheduled hearing

Functioning phone system. Participants should ensure that they have access to a phone system. Participants may call in using smart phones while also using Zoom; please connect to audio first and then connect to Zoom. WCAT recommends using a headset with a microphone for the duration of the hearing. If parties do not have access to a headset, they can use speakerphone. Participants who use cell phones are asked to ensure that it is adequately charged, and a charger is nearby.

Where possible, WCAT recommends using a land line telephone for the best sound quality. During a video conference hearing, participants should close all unnecessary applications on their computer and reduce the number of devices using their internet connections.

Participants should mute their telephones, as this is helpful for sound quality at the hearing, and participants will be reminded to mute their phones when they are not speaking.

For video conference hearings, participants should be aware that larger technological devices will generally provide a view of a greater number of participants on the screen at one time.

- Appeal Records

Parties must ensure that they or their representatives have access to the Appeal Record, either in paper format or electronically. The Zoom screen-sharing function will not be available for use by the chairperson or participants during the hearing, due to privacy concerns.

- Environment for the telephone conference or video conference hearing

Participants should conduct the telephone conference or video conference hearing in a quiet and private indoor space. Ensure that the lighting and audio conditions are suitable. There should be adequate lighting; however, participants should avoid sitting with a light source directly behind them, which blinds the camera and makes them difficult to see. WCAT requests that any observers be identified at the start of the hearing. While observers are permitted, they should be identified at the start of the hearing, and all witnesses must provide their testimony unassisted.

- Conduct during the telephone conference or video conference hearing

Participants should dress for the hearing in appropriate clothing.

WCAT asks that participants not eat or smoke during the hearing. If a participant wishes to eat or smoke, he or she should ask for a break. Paper shuffling and other distracting noises should be avoided, and participants should be mindful of the noise created by typing on a keyboard.

Participants are asked not to change their location, or move away from the screen, or turn off the camera during the video conference hearing, unless directed by the chairperson.

During the Hearing

1. Natural Justice

Like all WCAT hearings, the telephone conference or video conference hearing will proceed in accordance with the principles of natural justice, including the principle that all parties be given a fair opportunity to have their case heard and to meaningfully participate. The chairperson will instruct the parties on the order of proceedings once the hearing has started. Generally speaking, the usual format for in person hearings will be followed: introductory remarks from the chairperson/appellants presentation/other parties

presentations/questioning of witnesses if applicable/closing submissions. The chairperson will reserve the decision and release it in writing in accordance with the legislation.³

2. Confirming the Participant's Identity

Participants may be asked to verify their identity to the chairperson at the start of the telephone conference or video conference hearing. In the case of a witness who is not a party to the appeal, the representative calling the witness to testify will be required to confirm the identity of the witness.

3. Effective Communications During the Hearing

Participants should try to speak, one person at a time.

WCAT asks participants to say their names whenever they start speaking.

Devices that are not in use should be turned off, and background noises should be turned off, including radios and televisions. As stated before, a participant may be asked to mute their phone when they are not speaking, to assist with the sound quality of the telephone conference.

WCAT recognizes that representatives and parties may wish to have a confidential discussion with each other during the hearing. Remote hearings present special challenges for these communications. Participants should request a break if a private discussion is necessary. Private discussions between parties and representatives will be conducted over the parties' own phone lines.

4. Appeal Record for the Hearing

The chairperson will have access to the Appeal Record for the appeal, either on paper or as an electronic file. Participants should ensure that they provide the page reference when referring to a document in the Appeal Record. The Zoom screen-sharing function will not be available for use by the chairperson or participants during the hearing, due to privacy concerns.

WCAT will send the Appeal Record to the appropriate parties in accordance with its usual practice.

³ *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act*, paragraph 21(10)(a).

5. Recording the Hearing

WCAT will record the hearing proceedings as in the usual course. No other recording of the hearing process (whether audio or visual) by representatives or parties should occur. Participants are not permitted to take photographs of the video conference hearing or generate screen captures.

6. Objections

If there is an objection or a question about the proceedings, the party or representative may raise it at any time, respectfully, just as one would in the normal course of an in-person oral hearing. The recommended approach is as follows:

- In telephone conference hearings, the parties or representatives should respectfully interrupt the conversation to let the chairperson know they have something to say.
- In video conference hearings, parties or representatives should raise their hand to show chairperson that they wish to speak.

Witnesses - Location of Witnesses

If a party will be calling multiple witnesses, consistent with in-person hearings, the witnesses are expected to provide their testimony individually.

If a party intends to call more than one witness and the witnesses are in different locations, each witness will be contacted separately. The representative will be responsible for contacting the witnesses when it is their turn to testify, and for ensuring that the witnesses know how to connect with the telephone conference or video conference hearing.

Observers

Generally, it will be acceptable for a party to have an observer, but any observer(s) should be identified at the start of the hearing by the party or the representative.

New Documents

New documents will be managed in accordance with the *Appeals Guidelines*.

If You Become Disconnected During the Hearing

Participants who lose the audio connection during the hearing should reconnect by using the dial-in information provided for the hearing. Participants should restate their names when rejoining the telephone conference.

If participants lose the Zoom video connection during the hearing, they should attempt to re-join the hearing by going back to the Zoom.us website and join using the Zoom conference information originally provided (meeting ID and meeting password).

Every attempt will be made to ensure that the hearing is reconnected. If for any reason the Zoom aspect of the video conference does not function, the chairperson may convert the hearing into a telephone conference hearing so that the hearing can proceed (subject to the discretion of the chairperson).

We anticipate that there may be unavoidable interruptions or technical difficulties, and we appreciate the patience and understanding of all participants.

II. Protocols/Best Practices: Written Submissions

Hearing Information for Representatives, Parties and WorkSafeNB

General

The written submission process allows for consideration of an appeal on the basis of the Appeal Record as well as written submissions. The Appeal Record contains a copy of the claim (or employer) file, applicable sections of legislation and WorkSafeNB policies.

The process can be initiated by the appellant or representative; however, the Chairperson of the Appeals Tribunal decides on the method utilized to process the appeal.⁴

The Chairperson's decision is sent to the parties, representatives and WorkSafeNB.

The person and/or a representative submitting the appeal has the right to fully participate in the process.

The other party, and/or a representative, has the right to fully participate in this process.

WCAT has the right to establish time limits to provide the written submissions.

⁴ *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act*, subsection 21(4.2).

All parties are informed, in writing, of the decision.

Procedure

Once the Appeal Record is completed, WCAT distributes it to the participating parties and WorkSafeNB with a request to the appellant or representative for their written submission.

Upon receipt of the appellant's or representative's written submission, WCAT sends it to the responding parties and WorkSafeNB, when applicable, with a request for their written submissions.

Upon receipt of the responding parties' or representative's and WorkSafeNB's written submissions, WCAT sends these to the appellant or representative for the final rebuttal.

Once the final rebuttal is received, WCAT sends it to the parties and WorkSafeNB.

The Appeal Record is updated to include the written submissions and final rebuttal as well as all documentation received. It is then assigned to one of the Tribunal's chairpersons for review and decision in accordance with the legislation⁵.

III. Protocols: In-Person Hearings

Hearing Information for Representatives and Parties

Anyone who is exhibiting symptoms which are consistent with COVID-19 as described by the Chief Medical Officer for New Brunswick, should not attend a hearing, and WCAT should be immediately notified.

All participants to the hearing must comply with the provincial rules in regard to travel from outside New Brunswick and quarantine requirements.

Each hearing room will have a maximum number of people that may be in the room at anytime – inclusive of chairperson and any required staff. A maximum of two (2) participants will be allowed for each party, unless otherwise agreed upon as essential.

If more than one hearing is scheduled on a single day, they will be scheduled to ensure the matters are sufficiently staggered to limit the number of people attending any particular hearing room at any given time.

⁵ *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act*, paragraph 21(10)(b).

Before the Hearing

Prior to the hearing, all parties and representatives (as appropriate) are to advise WCAT of the identity of individuals that will be present during the hearing and when. These lists must be made available to chairperson prior to the hearing. Non-essential individuals, i.e. neither a party nor a witness, may be excluded from attending the hearing.

A staff member of WCAT will schedule pre-hearing telephone conference calls to ensure that all parties and representatives understand the procedures to be followed when arriving at the hearing location and during the proceedings.

Representatives or parties intending to call a witness that is unable to personally attend at the hearing, or may wish to appear for a hearing remotely, may request to have such witness or party appear via telephone conference. All such requests shall be made to WCAT.

Representatives or parties who will require telephone conferencing for the receipt of evidence must advise WCAT staff member at the pre-hearing telephone conference that they will require this assistance.

- **Appeal Record Materials**

If there are documents that are to be tendered during the course of the hearing, a sufficient number of copies should be prepared in advance so that all participants – the chairperson, the representatives, the parties or relevant witnesses may each have their own set of copies to work from. The documents should be sent electronically or by delivery before the hearing to minimize the need to physically share documents.

Whenever a document is manipulated by more than one person, the participants touching the document should disinfect their hands before with the available disinfectant and immediately after handling the document. This process should be repeated each time a participant comes in contact with a new document.

At the Hearing

Physical distancing requirements must be respected by all participants while in the hearing rooms. It is expected that the parties and representatives (as appropriate) will ensure that physical distancing is respected by their clients.

It is recommended that a community mask be worn in the hallways and washrooms, as it can be difficult to maintain social distancing.

All participants in the hearing rooms must respect signage to indicate where people may and may not sit. All participants must follow any indicators on the floor setting out where people should stand and walk or arrows marking the direction of traffic in hallways and stairwells.

Parties and witnesses will not be allowed to testify while wearing a face mask. Witnesses, like all participants, will be welcome to wear a face mask anytime they are in the hearing room other than when they are actually testifying. Face shields will be made available for any witness who feels uncomfortable removing their face mask during the testimony. This provision does not apply to religious face coverings.

Representatives, parties or witnesses who intend to use demonstrative evidence (i.e. maps, diagrams or photos) are asked to ensure that they are sufficiently large so as to be visible by all participants in the hearing room, to reduce the need for representatives and parties to congregate around the item.

Services Offered

WCAT will not be providing water or glasses to counsel and witnesses. Everyone may bring their own water and must ensure that any bottles or other personal items are removed at the end of each day.

Hand sanitizer, gloves, disposable masks, face shields and disinfecting wipes will be available in the hearing room.

These protocols are subject to change on the advice of the Department of Health, and/or Office of the Chief Medical Officer of Health, and/or the Department of Public Safety, and in response to the evolution of the COVID-19 Pandemic.

**ISSUED by Kelli Simmonds, Chairperson of the Worker's Compensation Appeals Tribunal
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Workers' Compensation Appeal Tribunal

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