



# ADR at the Workplace Safety and Insurance Appeals Tribunal

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# ADR at the Workplace Safety and Insurance Appeals Tribunal - Context

- **WSIAT determines appeals of final decisions of the Workplace Safety and Insurance Board (“the Board”)**
- **Jurisdiction requires a final decision from the Board (exception – right to sue applications)**
- **Board is usually not a party before the Tribunal – parties are usually the injured worker and the accident employer**

## ...WSIAT Context

- **Accident employer may not have an interest in participating in an appeal at WSIAT**
- **Employer's interests are usually financially driven, but may be associated with the merits**

# The ADR Process at WSIAT – Request for ADR

- **Notice of Appeal**

- ⇒ Notice from the appellant to stop the six month limitation period

- **Confirmation of Appeal**

- ⇒ Certification from the appellant of readiness to have appeal scheduled – documentation, witnesses, etc. ready for hearing

- **Confirmation of Appeal form**

- ⇒ Asks the appellant whether appellant wishes to have appeal dealt with in the ADR stream

# ...WSIAT - Request for ADR

- **If “no”**
  - ⇒ Ordinary hearing scheduled
- **If “yes”**
  - ⇒ Office of Vice-Chair Registrar considers whether the appeal is appropriate for ADR
- **If appropriate, assigned to a mediator**

# Conducting the Mediation and Rendering Decision

- **Current WSIAT practice:**
  - ⇒ Staff mediator conducts mediation
- **Earlier versions of ADR at WSIAT:**
  - ⇒ Vice-Chair mediator
  - ⇒ Vice-Chair med-arb
- **If agreement reached:**
  - ⇒ Mediator prepares report recommending the agreement, providing comprehensive background, and rationale for agreement
  - ⇒ Referred to a Vice-Chair to render decision which confirms the agreement, certifying that agreement reflects the parties' entitlement under the Act

# ...Conducting the Mediation and Rendering Decision

- **If no agreement:**
  - ⇒ Appeal scheduled for hearing
- **Agreement is usually confirmed, but if Vice-Chair is unwilling to confirm agreement:**
  - ⇒ Order further investigation;
  - ⇒ Re-negotiate agreement; OR
  - ⇒ Schedule ordinary hearing

# Determining Whether an Appeal is Appropriate for ADR

## ■ Factors considered:

- ⇒ Are there two parties?
  - two parties required for mediations
  - single party ADR cases may be assigned to staff mediator for “batch” sessions (where a single representative appears for several injured workers and, if no agreement, parties must be ready to proceed to hearing on the following day)
- ⇒ Is *viva voce* evidence under oath required to determine the appeal?
- ⇒ Is the issue novel? Would a precedent be desirable on the issue?



# ...Determining Whether an Appeal is Appropriate for ADR

- ⇒ Will a determination of credibility be necessary to resolve the appeal?
- ⇒ Is there a “spectrum” of possible outcomes? (e.g., a range of possible arrears dates? dates when worker was capable of returning to work?)
- ⇒ Is the issue in dispute a “yes/no” proposition? (Did an accident occur? Is the injury attributable, at least in part, to the subject accident, or entirely attributable to natural aging? Entitlement to occupational hearing loss?)

# Role of Decision-Makers

- ***Workplace Safety and Insurance Act*, section 173 requires that appeals be determined by the Chair of the Tribunal, a Vice-Chair sitting alone, or a Vice Chair sitting on a Panel with members representative of employers and of workers**
- **The requirement applies even when ADR is employed**
- **The agreement between the parties has no effect until confirmed by decision**

## ...Role of Decision Makers

- **Decisions may direct the Board to do something: Board will not act without direction from a person with statutory authority**
- **Section 16 of the Act states that an agreement between worker and employer to waive rights is void:**
  - ⇒ Decision demonstrates that disposition reflects rights of the parties under the Act, as determined by the decision maker, independent of the parties' agreement.