

Decision of the Appeal Division

Number: 24
Date: February 10, 1999
Panel: Maureen Nicholls, Chief Appeal Commissioner
Subject: Practice and Procedure Directive
Contact with Appeal Commissioners by Parties

The appeal division is a quasi-judicial tribunal serving as the last level of appeal on non-medical issues in the workers' compensation system in British Columbia. The appeal division has a responsibility to ensure compliance with the requirements of natural justice and procedural fairness, and to maintain the integrity of the decision-making process.

Section 85.1 of the *Workers Compensation Act* provides that the chief appeal commissioner may determine the practice and procedure for the conduct of appeals by the appeal division, subject to any policies, bylaws or resolutions of the governors under Section 82.

This practice directive is intended to provide guidance to the workers' compensation community concerning the appeal division's practices and procedures regarding contact between appeal commissioners and parties to appeal division proceedings. The guidelines provided concerning the conduct of parties also apply to their representatives and witnesses.

The central focus of this directive concerns the provision of evidence and argument in connection with the hearing of a particular appeal or other matter before the appeal division. These guidelines largely involve a statement of current practice, rather than representing a change in approach by the appeal division.

Generally

Feedback concerning the performance of the appeal division, and input concerning our practices and procedures, is welcome. Comments of this nature should be sent to the chief appeal commissioner.

Worker and employer interest perspective appeal commissioners may maintain active contact with the respective constituency. Such contacts do not place the appeal commissioner in a real or apparent conflict of interest. However, all appeal

commissioners must avoid relationships or associations which could impair the appeal commissioner's ability to discharge his or her duties fairly and impartially.

Consideration of Particular Matters

Evidence and argument concerning a particular appeal or other matter may be presented to an appeal commissioner, or panel of appeal commissioners, either orally (in an oral hearing, if granted), or in writing. In either case, notice is given to the other party, and that party is given the opportunity to participate.

Direct contact with an appeal commissioner concerning a particular matter or decision, such as by telephone call or by conversation outside a scheduled oral hearing, would be a private communication. Private communication with a decision-maker may well give rise to an apprehension of bias, and invalidate any subsequent appeal division decision. Similarly, direct oral communication with the appeal division (such as to the chief appeal commissioner or deputy chief appeal commissioner) which concerns a matter before a panel of the appeal division, may also have the potential to give rise to an apprehension of bias.

The appeal commissioners' code of conduct stipulates that at any stage of a proceeding, appeal commissioners must not communicate about the proceeding, directly or indirectly, with any party, representative or witness, except in the presence of all parties and/or their representatives, or unless the correspondence is copied to all the parties and/or their representatives. Consequently, contact with the appeal division by parties with respect to proceedings should normally be conducted through administrative staff of the appeal division.

Inquiries by Parties

Appeal officers will automatically provide general information such as the scheduled due date for an appeal division decision and any extension of the due date for the making of the decision. Appeal officers will, on request, advise parties of the names of the appeal commissioner(s) hearing a matter. Appeal officers are obviously not able to provide "predictions" as to when a decision will be issued in advance of its completion. On matters to which the 90 day time frame for decision-making does not apply, the appeal officers may, on request, seek direction from the chief appeal commissioner to ascertain whether a general estimate of the likely time frame for decision making may be provided.

Telephone Contact

For the reasons outlined above, the appeal division will not normally direct telephone calls through to appeal commissioners from individuals or entities related to the hearing of an appeal or other matter for adjudication by the appeal division. Telephone calls will normally be taken by administrative staff of the appeal division. If the nature of the telephone call requires that it be documented, a memo will be placed on file and will be subject to the normal appeal disclosure practices. Submissions in relation to an appeal or other matter are not accepted by way of telephone conversation with appeal division staff.

Hearings

Where an oral hearing is granted, this is normally arranged so that the appellant and other party may attend in person before the appeal commissioner(s).

It is also open to the appeal division panel to convene a hearing by telephone. This might be undertaken, for example, where some additional information or clarification is required and no other party is participating. This will only be undertaken at the discretion of the panel. The panel must ensure compliance with the requirements of natural justice. Parties will normally be advised in advance of the planned telephone inquiry or hearing.

Time issues

Parties should not press a panel to hasten the adjudicative process through correspondence directed to the panel after submissions have completed. Such communications will normally be unnecessary where there is a 90 day time frame for appeal division decision-making. If there are any communications of this nature, they should be sent to the attention of the chief appeal commissioner. The chief appeal commissioner may, if she considers it appropriate, bring the general issue to the attention of the panel without normally disclosing the correspondence.

Post-decision contact

After the appeal division decision has been issued, parties to the decision should not correspond with the appeal commissioner(s) regarding it. Such contacts could be viewed as an attempt to influence the consideration of similar issues in future cases.

If the decision failed to address an issue raised in the appeal or contains a clerical error (such as an apparent typographical error as to a date), the party may write to the chief appeal commissioner to request that the matter be returned to the panel for correction

or completion of the decision. If a party objects to a decision, and believes grounds may exist for reconsideration of the appeal division decision, the party may write to the chief appeal commissioner seeking reconsideration of the decision. Such correspondence should not be copied to the appeal commissioner(s) who issued the decision.

The appeal division manager will normally handle any telephone calls regarding an appeal division decision that has been issued.

Chief Appeal Commissioner

The chief appeal commissioner is responsible to the governors for the general operation of the appeal division under Section 85(7) of the *Workers Compensation Act*. The chief appeal commissioner appoints appeal commissioners, and has authority to establish panels of the appeal division and to refer a matter that is before a panel to the appeal division or another panel.

It is open to parties, at any time, to communicate in writing a concern with respect to the handling of an appeal or other matter to the chief appeal commissioner. However, the chief appeal commissioner will generally defer consideration of the matter until the panel of the appeal division has issued its decision, at which time, and in appropriate circumstances, the matter may be treated as an application for reconsideration of the appeal division decision.

Conclusion

The appeal division wishes to remain accessible to, and responsive to the concerns of, parties. However, care must be taken to avoid communications with appeal commissioners which would undermine the confidence of the parties in the integrity of the decision-making process. The parties to a proceeding are entitled to expect that the hearing of a matter will not be influenced by private communications which have not been disclosed to them.

These guidelines are intended as an explanation and public recording of the practices and procedures of the appeal division. This directive is intended to further general awareness and understanding of our practices and procedures, as part of our commitment to openness and accountability in the operation of the appeal division.