

Adjournments and Withdrawals

1.0 This Practice Direction:

- explains the difference between an adjournment and a withdrawal
- explains the Tribunal's strict adjournment policy and the reasons for it
- identifies the process to be followed and any necessary information for adjournment or withdrawal requests
- explains what steps need to be taken to pursue a matter after an adjournment or withdrawal.

2.0 Adjournment or Withdrawal

2.1 An adjournment means that the hearing will not go ahead on the scheduled day but will continue on another day.

2.2 A withdrawal occurs when the appellant advises the Tribunal that he or she does not wish to proceed with the appeal, and the Tribunal closes the file without making a decision about the merits of the case.

3.0 Strict Adjournment Policy

3.1 The Tribunal must handle several thousand appeals each year with limited adjudicator, staff, and hearing room resources. The Tribunal requires the parties to follow various pre-hearing procedures, including pre-hearing disclosure, so that it can use hearing time efficiently. See *Practice Direction: Disclosure, Witnesses and the Three-Week Rule*. The Tribunal also provides all parties with information about representatives, so that they can make an informed decision about obtaining a representative before the hearing. The Tribunal is unlikely to grant a request for an adjournment to obtain representation at the hearing without some further reason.

3.2 The Tribunal schedules hearings in consultation with the parties. The Tribunal expects parties to prepare for the hearing and to be ready to attend once the date is set.

3.3 Adjournments waste both the Tribunal and parties' resources, and cause significant delay to the parties and to other parties who are waiting for hearing dates. An appeal can take a number of months to reschedule. Delay can cause

other prejudice to the parties and the hearing process. For example, witnesses may move. The Tribunal, therefore, focuses on pre-hearing preparation and has a strict adjournment policy.

3.4 The Tribunal does not expedite a hearing that it has adjourned at the request of the appellant.

4.0 Adjourments Before a Hearing

4.1 The sooner a party makes an adjournment request, the fewer resources are wasted and significant prejudice is less likely to occur.

4.2 The Tribunal's Appeals Administrator generally decides a pre-hearing request for an adjournment. The party should make the request in writing to the Appeals Administrator as soon as possible. The request should:

- set out the reason for the request;
- be sent to the other party or representative; and
- if a representative makes the request, the representative must confirm in writing that the party consents to the adjournment.

4.3 If the appellant requests an adjournment, the Appeals Administrator will generally grant the request if it is made 6 weeks before the hearing.

4.4 If the Appeals Administrator cannot set a new hearing date because the appellant is not ready to proceed, the Tribunal will handle the case according to the *Practice Direction: Inactive Appeals*.

4.5 If the respondent requests an adjournment, the Appeals Administrator will generally grant the request if the appellant consents. The respondent must contact the appellant to request his or her consent, and advise the Appeals Administrator if the appellant consents.

4.6 If the Appeals Administrator grants the adjournment, the Tribunal will process the appeal in the usual manner once the party is ready to proceed.

5.0 Adjourments after the Hearing Begins

5.1 If the Appeals Administrator refuses the adjournment request, the parties must

appear on the hearing date. While the party may make another adjournment request to the Vice-Chair or Panel, the parties must be ready to proceed with the hearing if the adjournment request is refused.

- 5.2** Where a Vice-Chair or Panel is seized with a matter, an adjournment request may be referred to the seized Vice-Chair or Panel. For example, a request to adjourn a reconvened hearing will go to the Vice-Chair or Panel.
- 5.3** Parties and representatives are expected to attend a hearing at the scheduled time, prepared to proceed with the hearing. Where a party or representative who has been given notice of the hearing fails to appear without explanation, the Vice-Chair or Panel will wait **30 minutes** to allow late parties or representatives to arrive or to contact the Tribunal. If the party or representative has still not appeared, the Vice-Chair or Panel may proceed in the absence of that party or make such other order as it sees fit.
- 5.4** In deciding an adjournment request, the Vice-Chair or Panel will consider whether an adjournment is necessary to provide an opportunity for a fair hearing. The Vice-Chair or Panel will refuse an adjournment request where the matter can be addressed by:
- a short break
 - post-hearing submissions
 - altering the order of proceedings, or
 - such other direction as the Vice-Chair/Panel determines is appropriate.
- 5.5** The Vice-Chair or Panel may consider any other issue relevant to the adjournment request, including:
- whether the party or representative requesting the adjournment has contributed to the need for the adjournment request or previous adjournments
 - whether the party or representative made the request at the earliest opportunity
 - whether the party or representative made reasonable efforts to avoid the need for an adjournment; and
 - any prejudice that may result from granting or refusing the adjournment that cannot be remedied by conditions.

- 5.6** Where the Vice-Chair or Panel grants an adjournment request, they may impose any conditions on the future conduct of the hearing, including a condition that no further adjournment will be permitted except in the most extraordinary circumstances.
- 5.7** If the Vice-Chair or Panel grants an adjournment because an issue is outstanding at the Board, the hearing will be rescheduled when the Board issues its decision. The party should contact the Tribunal when they receive the Board decision.
- 5.8** In order to preserve the evidence, the Vice-Chair or Panel will usually hear the testimony of any available witnesses before adjourning a hearing.
- 5.9** For adjournments in Right to Sue hearings, see *Practice Direction: Right to Sue Applications*.
- 5.10** If a case is adjourned without setting a new date because the appellant is not ready to proceed, the file will be handled in accordance with *Practice Direction: Inactive Appeals*.

6.0 Withdrawals

- 6.1** Once a hearing is scheduled, a party can withdraw their appeal in writing at any time before the scheduled hearing date. Where more than one party is appealing, the withdrawal of an appeal by one party will not affect the appeal of the other party.
- 6.2** Once a hearing has begun, a party may request permission to withdraw the appeal at the hearing. The Vice-Chair or Panel:
- may grant the request and may issue directions or conditions concerning any future appeal; or
 - may refuse the request if it would be an abuse of process to grant it.

If the Vice-Chair or Panel refuses to allow the appeal to be withdrawn, it may

- decide the case based on the available information
- adjourn the case, with or without conditions

- issue directions for the future hearing of the case
- make any other order they determine is appropriate.

6.3 Where an appellant withdraws the appeal, the Tribunal closes the file and returns it to the Board. If parties want to appeal later, they must file a new appeal. Since the time limit will generally have expired, the party can only appeal if the party satisfies the Tribunal that a time extension should be granted. See *Practice Direction: Time Extension Applications* for information on how to apply for a time extension and the test for obtaining a time extension.

Dated at Toronto, Ontario this first day of October, 2007
Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Tribunal Chair