

## Disclosure, Witnesses and the Three-Week Rule

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### 1.0 This Practice Direction:

- explains the purpose of disclosure
- explains the disclosure requirements
- explains what happens if disclosure is late (the three-week rule).

### 2.0 Purpose of Disclosure

2.1 The purpose of the Tribunal's disclosure practices is to give the parties, the Tribunal and its adjudicators a chance to:

- understand what the case is about
- prepare for the hearing
- consider if they can resolve the case without the need for a hearing
- prepare documents of the evidence so that the parties and the Vice-Chair or Panel all have the same information for the hearing
- identify other information that may be needed at the hearing. This reduces adjournments and inquiries after the hearing; and
- prepare for the hearing (e.g. allow enough time for the witnesses to testify).

### 3.0 Authority for Tribunal Disclosure Rules

3.1 The *Workplace Safety and Insurance Act* allows the Tribunal to:

- determine its own practice and procedure (s.131)
- summon witnesses (s.132), and,
- require parties to provide documents and things which the Tribunal considers necessary to make its decision (s.132).

3.2 The Tribunal has adopted a general practice about disclosure.

#### 4.0 Disclosure of Documentary Evidence

- 4.1 Parties must disclose all available evidence with the Confirmation of Appeal (COA) form. See *Practice Direction: Confirmation of Appeal and Hearing Ready Letter*.
- 4.2 Parties must disclose all other evidence to the Tribunal and to the other parties no later than three (3) weeks before the hearing date. Parties should take particular care to disclose additional evidence (e.g. medical reports) they intend to use at the hearing that became available *after* filing the COA.

#### 5.0 Disclosure of Related Issues

- 5.1 Parties have a continuing obligation to advise the Tribunal of any related issues or appeals that they are pursuing at the Workplace Safety and Insurance Board to avoid unnecessary adjournments or delays in the processing of appeals.
- 5.2 Parties must advise the Tribunal at least three weeks before the scheduled hearing date of a related issue that may prevent the appeal from proceeding as scheduled.

#### 6.0 Disclosure of Witnesses

- 6.1 Parties must disclose witness information on the Confirmation of Appeal (COA) form. The following information must be provided to the Tribunal:
- a list of all witnesses the party intends to have at the hearing, other than the worker (a witness list); and
  - a summary of the evidence that each witness (other than the worker) will give at the hearing (a "will say" statement).
- 6.2 Where a party changes, removes, or adds a new witness to the party's witness list after filing a COA, the party must disclose this by providing written notice to the Tribunal and all other participating parties. In addition, a "will say" statement must be disclosed for each new witness.
- 6.3 Parties must advise their witnesses that they will be called for a hearing.
- 6.4 Parties must provide written notice of any changes to their witness list no later than three (3) weeks before the hearing date.

**6.5** When required, a party must make a written request to the Tribunal for a summons to have a witness attend a hearing. A copy of the request must be sent to other participating parties. (See *Practice Direction: Summonses and Production of Documents*.)

## **7.0 Exceptions to the Three-Week Rule**

**7.1** The three-week rule for disclosure does not apply to:

- submissions on the law (including copies of decisions) or Board policy, or
- Tribunal disclosure of updates from the Board of worker files or employer firm files.

## **8.0 Disclosure that does not comply with the Three-Week Rule**

**8.1** The Tribunal considers evidence provided less than three weeks before the hearing date to be disclosed late.

**8.2** The Tribunal does not place late evidence before the hearing panel but may advise the hearing panel or Vice-Chair that a party has submitted late evidence.

**8.3** The hearing panel or Vice-Chair considers the late evidence as a preliminary issue and has sole discretion to waive compliance with the three-week rule.

**8.4** In considering if it will waive the three-week rule, the hearing panel or Vice-Chair may consider any relevant factor, including:

- the reasons for not meeting the three-week rule
- the extent to which the substance of the information or testimony lies within the knowledge of the other party
- whether the other party opposes the new evidence or testimony
- the relevance of the documents or testimony to an issue in dispute
- whether the other party will be prejudiced by the introduction of the new evidence or documents.

**8.5** The hearing panel or Vice-Chair will decide:

- if the material can be used at the hearing
- if the new witness(es) may testify at the hearing, or
- whether the matter requires any other order, including a referral under the Tribunal's Code of Conduct for Representatives.

**8.6** A request for an adjournment to admit late disclosure is only granted in unusual circumstances. (See *Practice Direction: Adjournments and Withdrawals*.)

## **9.0 Disclosure for a Reconvened Hearing**

**9.1** Once a hearing has begun and evidence has been heard, parties may not provide new evidence between the first hearing date and the reconvened hearing date without leave of the Vice-Chair or Panel.<sup>1</sup>

**9.2** On rare occasions, a party may discover new evidence after the first hearing date. In such exceptional circumstances, the party must provide a letter explaining why the evidence was not previously available and why it should be accepted. The letter and the new evidence must be provided to the Tribunal and all other participating parties. The other parties can then provide submissions on whether the new evidence should be accepted. The Vice-Chair or Panel decides if the new evidence will be accepted.

**9.3** New evidence must be provided no later than three (3) weeks before the new hearing date.

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

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<sup>1</sup> For further information on reconvened hearings see *Practice Direction: Post-Hearing Procedure*.