

## Inactive Appeals

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### 1.0 This Practice Direction explains:

- when the Tribunal may make an appeal inactive
- the procedure for making an appeal inactive
- the procedure for reactivating appeals
- the procedure for updating or closing inactive appeals.

### 2.0 Inactive Files

**2.1** If the Tribunal cannot prepare an appeal for hearing or issue a decision, the appeal may be made inactive.

**2.2** The Tribunal may make an appeal inactive at the request of the appellant if they need additional time to:

- retain a representative
- conclude a related issue at the Board
- obtain additional information
- prepare for the hearing.

**2.3** On rare occasions, the Tribunal may make an appeal inactive at the request of the respondent.

**2.4** The party requesting an appeal be made inactive must provide their reasons and an estimate of when they expect to be able to continue.

**2.5** The Tribunal may make an appeal inactive without being requested to do so. For example, the Tribunal may make an appeal inactive if the appellant:

- does not respond on an ongoing basis to Tribunal correspondence or telephone inquiries
- has not provided required information

- needs time to consider whether they wish to continue or abandon the appeal
- is unable to commit to a hearing date.

**2.6** The Tribunal writes to the participating parties to tell them why the appeal is going inactive and what would be required to reactivate it.

**2.7** The Tribunal may decline a request to make an appeal inactive. The Tribunal may also reactivate an appeal without the agreement of the parties.

### **3.0 Objections to An Appeal Being Made Inactive**

**3.1** A party may object to:

- his/her appeal being made inactive, or
- the Tribunal declining to make the appeal inactive.

**3.2** A Tribunal Vice-Chair will consider the objection and will either issue a decision or provide direction about the further processing of the appeal.

### **4.0 Communications For Inactive Appeals**

**4.1** While an appeal is inactive, parties

- must contact the Tribunal if their contact information changes or if representative information changes.
- should, as a matter of courtesy, inform the Tribunal if they decide not to continue with the appeal.

### **5.0 Reactivating Appeals**

**5.1** Any participating party may request that their inactive appeal be reactivated.

**5.2** Requests to reactivate an appeal should be made in writing. If the appeal was made inactive because of missing information, the parties must provide all of the missing information or provide an explanation why the information cannot be provided.

- 5.3** A request to reactivate will be denied if the appeal still cannot be concluded. In such cases, the Tribunal writes to the participating parties explaining the reason and what needs to be done.
- 5.4** Parties requesting that an appeal be reactivated should expect this process to take some time. The Tribunal must retrieve the file information, obtain updates of the Board claim files and review the appeal before it can be reactivated.
- 5.5** The Tribunal may reactivate an appeal with or without the agreement of the parties.

## **6.0 Updating and Closing Inactive Appeals**

The Tribunal's caseload includes many inactive appeals that cannot be concluded. The Tribunal takes steps to update cases that it will be reactivating and to dispose of inactive appeals that have been abandoned. This ensures that increasing numbers of inactive cases do not accumulate in the Tribunal's caseload.

### **6.1 Updating Inactive Appeals**

- 6.2** The Tribunal may write to the appellant (or the representative) of an inactive appeal if:

- the respondent requests that an inactive appeal be closed or continued to a hearing or decision
- the appellant (or the representative) has not been in contact with the Tribunal for an extended period of time
- the Tribunal becomes aware that the appeal information is not current, or
- the parties' time estimate to be ready has expired without explanation.

In such instances, the Tribunal will ask the appellant confirm that s/he intends to continue the appeal. If the appellant is not yet ready to continue, s/he must provide a letter explaining the steps taken and an estimate of when s/he will be ready.

- 6.3** When the appellant provides the information requested, the appeal information is updated and the file may remain inactive.

A Tribunal Vice-Chair will be requested to determine whether the appeal should be considered abandoned and deemed withdrawn if the Tribunal's letter is returned to the Tribunal with no forwarding address.

#### **6.4 Notice of Intention to Close an Inactive Appeal**

A Tribunal Vice-Chair may also be requested to issue a Notice of Intention to close the appeal in some instances. For example, such a request would be made if:

- there is no response to the letter within 60 days
- the party advises the Tribunal they are not ready and it appears they are not prepared to take any steps to make the appeal ready for hearing.

**6.5** The Tribunal issues (under the signature of a Tribunal Vice-Chair) a notice of intention to close the appeal. The letter is sent by mail to the last address on file for all the parties to the appeal and includes a request that the appellant (or the representative) respond within 60 days.

**6.6** If a party notifies the Tribunal within 60 days, by mail, telephone or fax, that s/he is ready, willing and able to continue with the appeal, the appeal may be re-activated.

**6.7** If a party notifies the Tribunal within 60 days that s/he is not ready, but does not wish to have the appeal closed, s/he must explain what steps have been taken to ready the appeal for hearing and when s/he expects to continue. These submissions will be referred to a Vice-Chair for consideration.

**6.8** A referral to a Vice-Chair will be made where:

- the party advises the Tribunal s/he is not ready but does not wish to have the appeal closed
- there is no response to the letter by the end of the 60 day period(s)
- the letter is returned to the Tribunal with no forwarding address.

A Vice-Chair will then consider the appeal and may:

- instruct Tribunal staff to close the appeal without issuing a decision
- issue directions to the parties governing the further processing of the appeal
- issue a decision finding that the appeal has been abandoned or withdrawn
- in appropriate circumstances, refer the appeal for a hearing.

**6.9** Where the Vice-Chair instructs that an appeal be closed or issues a decision that an appeal has been abandoned or withdrawn, the appeal is closed. Once closed, any new appeal would be considered out of time because of the statutory time limits under the Workplace Safety and Insurance Act. See *Practice Direction: Time Extension Applications*.

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