

Mediation

1.0 This Practice Direction:

- explains the authority for and purposes of mediation
- explains which cases are suitable for mediation
- explains the mediation process
- explains confidentiality in the mediation process
- explains cooperation in the mediation process.

2.0 Authority for and Purposes of Mediation

2.1 Section 130 of the Act allows the Tribunal to “provide mediation services in such circumstances as it considers appropriate.”

2.2 The aim of mediation is to explore ways of resolving appeals at the Tribunal without holding full oral hearings. Mediation can also shorten Tribunal hearings by resolving some issues prior to the hearing or by creating agreed statements of fact.

3.0 Cases Suitable for Mediation

3.1 Mediation is only available if there are two opposing parties and both parties are participating in the appeal at the Tribunal.

3.2 Cases will qualify only if all parties and representatives consent to mediation.

3.3 The Tribunal must also agree that the issue(s) are suitable for mediation.

3.4 Generally, complex or novel appeals or appeals where credibility is an issue are not suitable for mediation.

4.0 The Mediation Process

4.1 The usual steps in the mediation process are:

- (a) The appellant or respondent asks that the appeal be dealt with by mediation. The appellant or respondent must ask for mediation before a hearing is scheduled for the appeal.

- (b) The Tribunal agrees that the issue(s) are suitable for the mediation process. If the appeal is not suitable, the case will be referred to a hearing.
- (c) In certain circumstances, the Tribunal may notice that mediation may be suitable. The Tribunal may ask parties if they want to participate in mediation.
- (d) Both parties must agree to participate in the mediation process. If a party does not agree to participate in mediation, the case will be referred to a hearing.
- (e) All parties sign a consent form at the mediation, agreeing to participate in the mediation process.
- (f) Specially trained Tribunal staff known as mediators will help the parties to settle or clarify issues. Mediators will use techniques such as mediation, negotiation and neutral evaluation to try to resolve the appeal. The mediators may:
 - arrange telephone calls and teleconferences
 - conduct mediation sessions and caucuses
 - seek input from medical authorities, the WSIB and other individuals and institutions
 - draft recommendations, agreed statements of fact or statements of issues
 - provide a neutral, off the record evaluation of the strengths and weaknesses of the appeal.
- (g) If an agreement is reached between the parties, a Vice-Chair will review it. If the Vice-Chair is satisfied with the recommendation, they will release a decision incorporating the settlement. All agreements must be consistent with the Act and Board policy. If a Vice-Chair is not satisfied with the recommendation, the case will be referred to a hearing before a different Vice-Chair and the recommendation will not be included in the case materials. Decisions of the Vice-Chair are final and binding decisions of the Tribunal.
- (h) A hearing may still occur if:
 - an agreement cannot be reached between the parties, or

- there are outstanding issues which the mediator and parties agree should be referred to a Vice-Chair for hearing.

5.0 Confidentiality and Mediation

5.1 The mediation process is confidential. This means that:

- all disclosures, admissions and other communications made while the case is in the mediation process will be made “without prejudice” and only for the purposes of resolving an appeal
- such communications do not form part of the record at the Tribunal
- such communications will not be shared with another party or representative involved in this appeal or any other party or institution without the consent of the party making the communication
- such communications will not be used in any other proceeding at the Tribunal or elsewhere.

5.2 There are some exceptions to the confidentiality rule. The confidentiality rule does not apply to:

- disclosures, admissions or other communications where the party making the communication consents to its inclusion in the record or to its other use
- medical information or medical opinions which are part of or are added to the Tribunal and WSIB records
- disclosures, admissions or other communications that may show criminal activity
- communications between the mediator and Tribunal staff or OIC appointees.

6.0 Cooperation in Mediation

6.1 All parties and their representatives are expected to cooperate fully with the mediator. Full cooperation means:

- providing additional or clarifying information when requested

- promptly returning telephone calls and answering correspondence
- participating willingly and candidly in meetings and conference calls
- assisting in drafting and reviewing agreed statements of facts or agreements
- being available to attend a hearing on possibly short notice.

6.2 If a party does not cooperate, the mediator has the authority to:

- recommend that a case be decided in a written or oral hearing process by a Vice-Chair or Panel of the Tribunal
- make the appeal inactive at the Tribunal
- recommend to a Panel or Vice-Chair that restrictions be placed on a party's ability to take part in the appeal process.

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