

Transcripts of Board Hearings

1.0 This Practice Direction:

- explains when a party may use a transcript of a previous Board hearing at a Tribunal hearing
- identifies what needs to be done before a hearing to use a Board transcript
- provides information about ordering a Board transcript
- explains who pays for a Board transcript.

2.0 Tribunal's General Practice on the Use of Board Transcripts

2.1 The Tribunal reviews all the evidence that was before the Board as well as any new evidence. If an oral hearing is scheduled, the Tribunal will hear the testimony of any witnesses it feels have relevant information, regardless of whether they testified at the Board. Therefore, it is the general practice of the Tribunal not to make use of transcripts of previous hearings.

3.0 Witness Unavailable – Exception to the General Practice

3.1 If there is a Board transcript that includes evidence from a witness who is no longer available to testify, a party may request that this portion of the transcript be added to the case materials.

3.2 If a party wishes to have a portion of a transcript of a Board hearing placed before the Vice-Chair or Panel, a copy of the transcript and reasons for the request, including why the witness is not available, must be given to the Tribunal and all other parties to the appeal at least three weeks before the hearing date.

3.3 Whether the transcript will be admitted as evidence in the appeal will usually be addressed as a preliminary issue at the hearing, where all parties can make submissions on whether the transcript should be accepted.

3.4 In some cases, Tribunal staff may order a Board transcript and add it to the case materials prior to a hearing. Parties to the appeal will be notified that the Tribunal has ordered the Board transcript and will receive a copy once it arrives.

4.0 Inconsistent Testimony – Exception to the General Practice

4.1 If a party wishes to rely on a Board transcript only to show that a witnesses' testimony at the Tribunal hearing contradicts testimony given at the Board hearing, it is not necessary to provide a copy of the transcript before the hearing. However, additional copies must be brought to the hearing for the witness, the Vice-Chair or three Panel members and all other parties.

4.2 The party using a Board transcript to contradict a witness' testimony may do so during cross-questioning after the witness has testified about the specific topic of the prior statement. The following steps should be followed:

- ask the witness to confirm his or her recent testimony
- ask the witness if he or she made a previous statement – quoting the Board transcript
- if the witness does not admit to or remember the previous statement, quote the question that the statement was in answer to and when it was asked – describe the Board hearing (before what person, date, who asked the question)
- if the witness still does not admit or remember the previous statement, introduce the entire transcript of the testimony of that witness and provide copies to the witness, Vice-Chair or all Panel members and all other parties to the hearing, pointing out the statement
- give the witness an opportunity to respond.

4.3 All other parties will then be given an opportunity to make oral submissions on the transcript.

5.0 Other Exceptions are Decided By The Vice-Chair or Panel

5.1 If a party feels strongly that a transcript of a Board hearing should be provided to the Vice-Chair or Panel as evidence, he or she should give the Tribunal specific reasons in writing.

5.2 Whether the transcript will be admitted as evidence in the appeal will usually be addressed as a preliminary issue at the hearing, where all parties can make submissions on whether the transcript should be accepted.

6.0 Ordering Board Transcripts

6.1 The party who wishes to use the Board transcript must order it. Transcripts of Board hearings may be ordered by contacting the Board's Appeals Branch. The Board charges a fee for having hearing tapes transcribed.

7.0 Who Pays For a Board Transcript?

7.1 In most cases, the party ordering the transcript must pay for it. The Tribunal may pay for a Board transcript ordered by a party only in exceptional circumstances. In the rare instances where the Tribunal orders a Board transcript, the Tribunal will pay for the transcript.

7.2 A party requesting that the Tribunal pay for the Board transcript or a portion of the transcript due to exceptional circumstances should make the request at least three weeks prior to the hearing date and in writing, explaining the reasons for the request. For example, a party may want the Tribunal to pay for a transcript if it contains important evidence from a witness who has since died.

7.3 Where there is disagreement about whether a transcript of a Board hearing should be obtained, or who should pay for it, a Vice-Chair or Panel will decide. It will usually be a preliminary issue to be addressed prior to, or at the hearing. Sometimes, a Vice-Chair or Panel may not decide this issue until after the hearing date.

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