

Closing Appeals by the Tribunal

1.0 This Practice Direction:

- explains when an appeal is considered abandoned by the appellant
- explains the use of the Notice of Intention to Close letter, and when it is sent
- provides the procedure for closing an appeal that has been abandoned.

2.0 When is an Appeal Considered Abandoned?

2.1 The Tribunal may close appeals where it appears that the appellant has abandoned the appeal, such as when the appellant has failed to:

- complete a Notice of Appeal (NOA) in a timely manner
- complete a Confirmation of Appeal (COA) within 24 months
- take action to progress an inactive appeal to a Tribunal hearing
- act pursuant to an interim decision, adjournment memorandum or written ruling, or after an unsuccessful Tribunal mediation or
- respond to Tribunal communications.

3.0 Failure to Provide a Completed Notice of Appeal

3.1 The Notice of Appeal is considered complete only when the appellant has provided the complete Notice of Appeal (NOA) form, including a copy of the decision being appealed. The Tribunal will request any missing information from the appellant.

3.2 If the appellant does not provide the missing information, within a reasonable timeframe, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed unless the missing information is provided within 60 days. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

3.3 If the appellant provides a completed Notice of Appeal within the 60 day period, the Tribunal continues preparing the appeal for a hearing.

4.0 Failure to Provide a Completed Confirmation of Appeal

4.1 The Confirmation of Appeal (COA) must be filed no later than 24 months after the appellant first contacted the Tribunal. The Tribunal provides at least two

reminder/warning notices to the appellant before the 24 month time limit expires. The reminder notices provide the 24-month expiration date.

4.2 When an appellant does not complete the COA within 23 months, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed unless a completed COA is provided within the 24-month deadline. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

4.3 If a completed COA is provided within the 30 day period, the Tribunal continues preparing the appeal for a hearing.

5.0 Failure to Move Forward on an Inactive Appeal

5.1 The Tribunal makes appeals inactive in order to provide the appellant with additional time to prepare his/her appeal for hearing. The reasons and procedures for making an appeal inactive are outlined in the Tribunal's *Practice Direction: Inactive Appeals*.

5.2 After a reasonable period of time, the Tribunal will ask the appellant to advise the Tribunal if s/he intends to continue the appeal, and to outline the steps that s/he has taken in order to prepare the appeal to be heard. The letter will provide the appellant with **30 days** to respond.

5.3 If the letter returns undelivered, the appeal is closed without further notice via an abandonment memorandum issued by a Tribunal Vice-Chair.

5.4 If the appellant does not respond, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed as abandoned unless the appellant provides the information requested by the Tribunal within **60 days**. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

5.5 If the appellant responds within the 60 day period, the Tribunal processes the appeal according to the procedures outlined in the Tribunal's *Practice Direction: Inactive Appeals*.

6.0 Failure to Respond Following an Unsuccessful Mediation

6.1 When a Tribunal mediation does not result in a recommendation to a Tribunal Vice-Chair, it is sometimes unclear if the appellant wishes to continue to a hearing.

- 6.2** In such instances, the Tribunal writes to the appellant (and the representative) asking that s/he advise the Tribunal within 30 days if s/he intends to continue with the appeal.
- 6.3** If the letter returns undelivered, the appeal is closed without further notice via an abandonment memorandum issued by the Tribunal Vice-Chair.
- 6.4** If the appellant does not respond, a Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed as abandoned unless the appellant provides the information requested by the Tribunal within **60 days**. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)
- 6.5** If the appellant responds within the 60 day period, the Tribunal processes the appeal according to the information provided by the appellant.

7.0 Failure to Act Following an Adjournment

- 7.1** When a Tribunal hearing for an appeal is adjourned, the Vice-Chair or Panel may issue an interim decision, an adjournment memorandum or a written ruling. In such instances, the Tribunal writes to the appellant (and the representative) to confirm what is required before the appeal can be prepared for a new hearing. The letter will ask the appellant to provide information requested by the Vice-Chair or Panel, or to outline the steps s/he has taken to fulfill the instructions issued by the Vice-Chair or Panel.
- 7.2** If the interim decision, adjournment memorandum or written ruling provides neither a timeframe nor specific instructions to the appellant, the Tribunal will write to the appellant (and the representative), after a reasonable period of time, to ask that s/he confirm that s/he intends to proceed with the appeal. The letter will provide the appellant with **30 days** to respond.
- 7.3** Any response from the appellant or his/her representative may be referred to the original Vice-Chair or panel or to the appropriate Tribunal department. The appeal may then be made inactive, further processed for an additional hearing, or closed, depending on the nature of the information provided and the circumstances of the appeal.
- 7.4** If the appellant does not respond, the Notice of Intention to Close letter is sent. The letter provides notice that the appeal will be closed as abandoned unless the appellant provides confirmation of his/her intentions within **60 days**. (For more information on the Notice of Intention to Close, see section 8.0 of this Practice Direction.)

7.5 If the letter returns undelivered, the appeal is closed without further notice via an abandonment memorandum issued by a Tribunal Vice-Chair.

7.6 If the Vice-Chair or Panel is seized, any response (or lack of response) from the appellant or his/her representative is referred to the seized Vice-Chair or Panel, with a request for instructions.

8.0 The Notice of Intention to Close

8.1 The Notice of Intention to Close is a letter sent by the Tribunal to warn the appellant that the Tribunal may close the appeal as abandoned.

8.2 In cases where the appellant appears to have abandoned the appeal by providing incomplete information or failing to respond to the Tribunal, the Tribunal issues a Notice of Intention to Close letter. This letter is signed by a Tribunal Vice-Chair and provides instruction on what the appellant is required to do to prevent the Tribunal from deeming the appeal abandoned and closing the appeal. The letter also provides a timeframe within which the appellant must respond, typically 30 or 60 days, depending on the circumstances of the appeal.

8.3 The letter is sent to the last address on file for all of the parties.

9.0 Closing Appeals by the Tribunal

9.1 If the Notice of Intention to Close letter returns undelivered, the Tribunal will make all reasonable attempts to obtain the appellant's current contact information. If the appellant cannot be located after these efforts, the appeal is closed without further notice.

9.2 If the appellant does not respond to the Notice of Intention to Close letter, the appeal is closed without further notice.

9.3 If the appellant responds to the Notice of Intention to Close letter, but the response does not contain the information requested by the Tribunal, the appeal is closed without further notice. In exceptional circumstances, such responses may be referred to a Vice-Chair for further instructions, at the discretion of the Tribunal.

9.4 If the appellant responds within the timeframe provided in the Notice of Intention to Close letter, the Tribunal responds to the information as appropriate and may:

- continue to prepare the appeal for hearing

- make the appeal inactive (see *Practice Direction: Inactive Appeals*) or
- refer the appeal to a Tribunal Vice-Chair for further instructions.

9.5 If the appeal is referred to a Vice-Chair, s/he will consider the appeal and may:

- make the appeal inactive (see *Practice Direction: Inactive Appeals*)
- 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.

9.6 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 of the same decision would need to meet the applicable time limits and require a time extension application (see *Practice Direction: Time Extension Applications*).

Effective date: July 1, 2014
Workplace Safety and Insurance Appeals Tribunal