

## **Input sought on proposed WCAT Regulations**

The Workers' Compensation Appeals Tribunal (Appeals Tribunal) is considering making regulations and is seeking input on the proposed regulations.

The regulations would:

- (a) protect the confidentiality of personal information disclosed to participants to respond to appeals; and
- (b) set a time limit for the Appeals Tribunal to decide an appeal once it is filed.

### Rationale for confidentiality regulation

When an employer requests a copy of a worker's claim file, the Appeals Tribunal requires that the employer sign an undertaking to keep the records confidential and to only use them to pursue or respond to the appeal.

The proposed regulation would codify this undertaking and enhance the protection of the personal information by giving it the force of a regulation. It also sets out circumstances when such information can be shared, such as: with consent, to comply with a subpoena, or to comply with a law.

The proposed regulation would also apply to disclosure to workers of materials other than their claim file; for example, if an employer were compelled to provide documentary evidence by the Appeals Tribunal.

The 2002 Focused Review of the Workers' Compensation System, better known as the Dorsey Report, had recommended that the *Workers' Compensation Act* be amended to give such confidentiality protection, but this recommendation has never been acted upon. This regulation would address this gap in the legislation.

### Rationale for time limit regulation

There is no legislated time limit for the resolution of an appeal, other than the Appeals Tribunal having sixty days once it has received all evidence and arguments. Ideally, most appeals should be resolved within three to six months. The Appeals Tribunal advises appeal participants that it expects appeals to be resolved within a year.

At the end of the fiscal year 2015-16, we had 72 appeals which had been with the Appeals Tribunal for over two years.

Having an appeal system which can take years to resolve an appeal violates a fundamental principle of workers' compensation: compensation to injured workers is to be provided quickly without court proceedings.

Delay in resolving appeals results in financial costs and human hardship.

For example, the longer the delay in accepting the claim of a worker who is off work, the more difficult it can be to help that worker return to work.

Likewise, costs associated with claims overturned on appeal are rarely recovered, so the longer benefits are paid, the greater the expense to the WCB Accident Fund.

The proposed regulation would require, except in extraordinary circumstances, appeals to be resolved within 18 months of the appeal having been filed. From a practical point of view, this means that all evidence and arguments would need to be presented to the Appeals Tribunal within 16 months, so as to allow the Appeals Tribunal its sixty days to make a decision.

The limit of 18 months attempts to strike a balance between giving participants a reasonable amount of time to acquire additional evidence and the timely resolution of appeals.

The Board's reconsideration policy, which generally allows for final decisions to be reconsidered on the basis of new evidence, remains available for participants who are unable to acquire evidence in a timely manner.

Please provide any comments on the proposed regulations by December 1, 2016 to:

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