

# APPEAL RULES

***Contact the Appeals Commission***

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- through our website at [www.appealscommission.ab.ca](http://www.appealscommission.ab.ca)

## Information note

### What these rules do

These are the Appeals Commission's rules that govern the practice and procedure of the Appeals Commission under the *Workers' Compensation Act*. The rules are intended to help everyone understand how appeals to the Appeals Commission work and will help those involved to prepare for and participate in the appeal.

### Contents of the rules

The Appeal Rules are divided into 6 Parts, as follows:

- Part 1 [*Fundamental Rules*]
- Part 2 [*Appeals to the Appeals Commission*]
- Part 3 [*Getting Ready for the Hearing*]
- Part 4 [*The Hearing and Decision*]
- Part 5 [*Reconsideration of Decisions*]
- Part 6 [*Technical Rules*].

### Definitions

An Appendix [*Definitions*] at the end of the rules contains a list of words that have particular meaning in these rules

### Information notes and summary overviews

The rules contain two particular features to help readers understand the rules. The first is a series of information notes that indicate other information or rules that readers may find helpful. You are reading an information note now. The other feature designed to help readers is summary overviews on the title page of each Part of the rules. The summary overview gives a brief description of what the Part is about.

### Numbering system

The rules are divided, numbered and named in the following way:

- rules that relate to a particular subject area are grouped into Parts with a number assigned to each Part, for example
  - Part 2 [*Appeals to the Appeals Commission*]

➤ Part 3 [*Getting Ready for the Hearing*]

➤ Part 4 [*The Hearing and Decision*]

- each Part consists of a series of rules numbered first with the Part number and then consecutively, for example, in Part 2 the rules are numbered 2.1; 2.2; 2.3 and so on;
- if a particular rule is divided into 2 or more identifiable sentences, subrules are usually created with numbers in brackets, for example: 2.1(1), (2), (3);
- if a rule or subrule is divided
  - the rule is divided into clauses, using lowercase letters in brackets, for example: 2.5(a), (b) and in the case of a subrule, 2.14(2)(a), (b), (c), (d), and
  - the rule can be further divided into subclauses, using roman numerals in brackets, for example: 1.12(2)(o)(i) and (ii).

#### **Authority for the Rules**

The Appeals Commission is given authority to make rules governing the practice and procedure applicable to proceedings before the Commission by section 13.1(3) of the *Workers' Compensation Act*.

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*[Words and phrases having defined meanings in these rules  
are listed in the Appendix.]*

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# PART 1: FUNDAMENTAL RULES

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***Summary overview of this Part:*** This Part contains basic rules that apply to the Appeals Commission, everyone involved in an appeal, and to the appeal itself.

The Part includes statements about the purpose of the rules, what the rules apply to, and the Appeals Commission's jurisdiction, and then describes how parties can be represented and the composition and operation of the Appeals Commission, including practice guidelines, types of hearings and how to communicate with the Appeals Commission.

## Information note

***Defined words:*** Words and phrases used in this Part that have meanings defined in the Appendix [*Definitions*] include

- Act
- appeal
- Appeals Commission
- assessment
- Board
- chief appeals commissioner
- compensation
- documents-only
- employer
- file
- party
- practice guideline
- prescribed form
- representative
- review body
- rules
- worker

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## PART 1: FUNDAMENTAL RULES

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### Division 1 Purpose, Application, and Jurisdiction

#### What is the purpose of the rules?

**1.1(1)** The purpose of these rules is to establish a timely, fair and independent process for appeals to the Appeals Commission.

**(2)** These rules govern

- (a) appeals to the Appeals Commission, and
- (b) the practice and procedure applicable to proceedings before the Appeals Commission.

#### Information note

The types of appeals the Appeals Commission can decide are described in rule 1.3 [*What can be appealed to the Appeals Commission?*].

#### What legislation governs the Appeals Commission?

**1.2** The Appeals Commission is required to follow the *Workers' Compensation Act* and the regulations made under that Act, including

- (a) the *Workers' Compensation Regulation*, AR 325/2002,
- (b) the *Firefighters' Primary Site Cancer Regulation*, AR 102/2003, and
- (c) the *Medical Panels Regulation*, AR 290/2006.

#### Information note

The regulations referred to are the applicable regulations to December 1, 2007. For the legislation and other matters governing Appeals Commission decisions, see rule 4.15 [*What controls Appeals Commission decisions?*].

### What can be appealed to the Appeals Commission?

**1.3(1)** Subject to the exceptions described in subrules (2) and (3), the Appeals Commission is given exclusive jurisdiction by section 13.1(1) of the Act to examine, inquire into, hear and determine all matters and questions arising under the Act and the regulations in respect of the following:

- (a) appeals from decisions of a review body about compensation payable under the Act;
- (b) appeals from decisions of a review body about an assessment under the Act, including an administrative penalty;
- (c) appeals from a determination of the Board about whether a worker is entitled to compensation under the Act and the regulations;
- (d) any other matter assigned to the Appeals Commission under an Act or by regulation under section 13.1(1)(d) of the Act.

**(2)** Two of the exceptions to the exclusive jurisdiction of the Appeals Commission follow:

- (a) section 13.2(11) of the Act authorizes the Appeals Commission, at any stage in proceedings before it, to ask the Court of Queen's Bench for an opinion on a question of law or jurisdiction;
- (b) section 13.4 of the Act permits the Board and any person who has a direct interest in a decision of the Appeals Commission made under section 13.2 of the Act, to appeal the Appeals Commission's decision to the Court of Queen's Bench on a question of law or jurisdiction.

**(3)** The Appeals Commission has no jurisdiction to decide questions of law involving the *Canadian Charter of Rights and Freedoms* in appeals if the notice of appeal is received on or after April 3, 2006. However, under the *Administrative Procedures and Jurisdiction Act* and the *Designation of Constitutional Decision Makers Regulation*, AR 69/2006, the Appeals Commission may decide questions of constitutional law arising from the federal or provincial distribution of powers under the Constitution of Canada.

**Information note**

If a party to an appeal intends to raise a constitutional law question relating to the distribution of powers under the Canadian Constitution, they must first give written notice of that intention at least 14 days before the scheduled hearing date – see rule 3.4 [*Notice of constitutional question*].

Questions of law involving the Canadian Charter of Rights and Freedoms must be referred to the Court of Queen’s Bench.

**Information notes and summary overviews**

**1.4** The highlighted *Information notes*, and the boxed *summary overview* on the title page of each Part, are inserted only as a reader’s aid, do not form part of these rules or the text to be interpreted, and have no legal effect.

**Information note**

You are reading an information note now. On the title page of each Part there is a summary of the contents of the Part. Both the information notes and the summary overviews are inserted for convenience of reference as a reader’s aid only.

**Waiver of and non-compliance with the rules**

**1.5(1)** The Appeals Commission may, in a particular case, do either or both of the following:

- (a) waive or vary a time period specified in these rules, whether or not the time has passed or expired;
- (b) waive or vary a rule.

**(2)** In deciding whether to give a waiver or variance the Appeals Commission must

- (a) take into account the particular circumstances of the case and what would be fair and just, and
- (b) satisfy itself that the particular circumstances justify a waiver or variance of the time period or rule, or both.

(3) The waiver or variance may be made or given subject to terms and conditions, or made or given subject to terms and conditions about future proceedings in the appeal, or both.

(4) This rule applies despite any other rule but does not apply to the Act or regulations under the Act, except when the Act or a regulation so permits.

**Information note**

These rules set out the process to be followed in the normal course of an appeal. However, the Appeals Commission recognizes that there may be particular circumstances that justify a time period being extended, or a rule being varied or waived. This rule allows that waiver or variance.

There are special rules for extending time limits for filing an appeal in rule 2.4 [*Extending the deadline for filing appeals*].

**Conflict between the rules and Acts and regulations**

**1.6** If any of these rules conflict or are inconsistent with an Act or regulation, the Act or regulation prevails to the extent of the conflict or inconsistency.

**Information note**

These rules are intended to complement the *Workers' Compensation Act* and its regulations and any other applicable Act or regulation. If there is any conflict or inconsistency between any Act or regulation and the rules, the Act or regulation takes precedence. For conflicts between Act, regulations, rules and practice guidelines, see rule 1.13(2) [*Practice Guidelines*].

**Division 2**  
**Representatives**

**Right to be represented**

**1.7(1)** A party has the right to be represented by another person before the Appeals Commission.

(2) When a party retains a representative for an appeal, a written notice of representation must be filed in the prescribed form with the Appeals Commission at the earliest opportunity.

**(3)** The notice of representation must

- (a) be in writing, be dated, and be signed by the party appointing the representative,
- (b) appoint and authorize the representative to act on behalf of the party, and
- (c) include the representative's postal address and telephone number, and their fax and cell phone numbers, if any.

**Information note**

The notice of representation should be filed when the appeal is filed – see rule 2.2 [*What information an appeal must contain*]. A document is filed with the Appeals Commission when the Appeals Commission receives the document – see rule 6.1 [*Filing documents with the Appeals Commission*].

Prescribed forms are available from the Appeals Commission website [www.appealscommission.ab.ca](http://www.appealscommission.ab.ca) or from a Commission office.

**Giving notice to a representative is notice to a party**

**1.8** A notice given to a representative by the Appeals Commission or by a party is notice to the party for whom the representative acts.

**Representative ceasing to act**

**1.9** If a representative ceases to act for a party, the party or the representative must promptly file a written notice with the Appeals Commission and send a written notice to every other party.

**Information note**

Rule 6.3 [*Sending documents*] describes how documents must be sent to parties.

### **Division 3** **Appeals Commission and Communication with the Commission**

#### **Composition of Appeals Commission**

**1.10** Under section 10 of the Act, the Appeals Commission consists of the following members appointed by the Lieutenant Governor in Council:

- (a) a chief appeals commissioner, who is the chair;
- (b) one or more appeals commissioners whom the Lieutenant Governor in Council considers to be representative of the interests of employers;
- (c) one or more appeals commissioners whom the Lieutenant Governor in Council considers to be representative of the interests of workers;
- (d) temporary appeals commissioners appointed in accordance with section 10(3) of the Act.

#### **Information note**

Section 10(3) of the Act reads:

**(3)** One or more temporary appeals commissioners may be appointed for terms of not more than one year and are eligible for reappointment for additional terms of not more than one year each.

#### **Appeals Commission panels**

**1.11** Under section 13.1(2) of the Act, the chief appeals commissioner may authorize a panel of 2 or more appeals commissioners to act on behalf of the Appeals Commission and that panel may exercise the powers of the Appeals Commission for that purpose.

#### **General authority of the Appeals Commission**

**1.12(1)** In exercising its jurisdiction under the Act, the Appeals Commission may, with respect to a particular appeal, do all or any of the following:

- (a) issue general or specific practice or procedural directions about the appeal at any time, with or without terms and conditions;

- (b) direct that an action be taken by any party within a specified time;
- (c) correct an obvious slip, typographical error, error of calculation, misstatement or technical error or omission by a party in any proceeding or document filed with or provided to the Appeals Commission, without first giving notice to the party.

**Information note**

This rule assists the Appeals Commission to manage particular appeals. Clause (c) allows the Appeals Commission to correct technical errors that should not delay proceedings.

For the rules relating to correcting decisions made by the Appeals Commission, see Part 4 [*The Hearing and Decision*], particularly 4.21 [*Technical errors and omissions*].

(2) In the course of an appeal the Appeals Commission, in addition to any other powers it has, may make any order or give any direction that the circumstances warrant, including, for example, making any or all of the following decisions, subject to other rules:

- (a) deciding an application for party status or an objection to party status (see rule 2.13 [*Parties to an appeal*] and rule 2.14 [*Application to become a party to an appeal*]);
- (b) deciding an issue relating to the jurisdiction of the Appeals Commission about an appeal or any aspect of it (see rule 1.3 [*What can be appealed to the Appeals Commission*]);
- (c) deciding any preliminary question of constitutional law raised by a party that may arise from the federal or provincial distribution of powers under the Constitution of Canada (see 3.4 [*Notice of constitutional question*]);
- (d) deciding an issue relating to the readiness of one or more parties for a hearing (for the certificate of readiness, see rule 3.1 [*Certificate of readiness and request for hearing*] and see rule 3.12 [*Application to re-schedule a hearing*]);
- (e) deciding an issue relating to the scheduling of a hearing (see rule 3.6 [*Scheduling the appeal hearing*]);
- (f) deciding an issue relating to an application to question a witness residing in or outside Alberta and to obtain answers to questions in writing for later use in the hearing (see rule 3.9 [*Application to obtain evidence from a witness*]);

- (g) deciding whether to issue or refuse a notice to attend or a notice to produce documents under rule 3.10 [*Notice to attend or notice to produce documents*] or rule 3.11 [*Refusal to issue a notice to attend or notice to produce*];
  - (h) deciding whether to dismiss an appeal for delay under rule 3.13 [*Dismissal of appeal for delay*];
  - (i) deciding whether to record oral or electronic hearings (see rule 3.2(c) [*Request for hearing form*] and rule 4.3 [*Recording the hearing and transcripts*]);
  - (j) directing that two or more matters be heard together at one hearing or directing that 2 or more matters be heard in separate hearings;
  - (k) adjourning a scheduled hearing date to a new date, time and place or until an event occurs or a condition is complied with, or cancel a hearing;
  - (l) when an oral hearing is not necessary, directing that a documents-only hearing be conducted (see rule 1.14 [*Type of hearing*]);
  - (m) requiring written submissions to be filed and set dates by which the submissions and any replies must be received (see rule 4.13(2) [*Argument and written submissions*]);
  - (n) imposing terms and conditions and time limits on any order or direction;
  - (o) directing a time, before the hearing, by which a party must
    - (i) identify their witnesses, including medical and technical witnesses;
    - (ii) describe the qualifications and provide a summary of the evidence of a medical, technical or other witness (see rule 3.8 [*Expert and other witnesses*]);
  - (p) ruling on the admissibility and relevance of evidence;
  - (q) referring a matter back to the review body or Board that made the decision appealed.
- (3)** The Appeals Commission may exercise its authority on application of a person or acting on its own initiative.

**Information note**

During an appeal, the Appeals Commission is often asked to make practice or procedural orders or directions on a wide variety of issues. This rule gives the Appeals Commission authority to give orders and directions to manage a particular appeal. Referring to this authority here avoids repetition later in the rules. In some cases, later rules deal specifically with procedural issues.

**Practice guidelines**

**1.13(1)** The chief commissioner may make practice guidelines to help parties and prospective parties with an appeal, or any aspect of it, and to help explain the Act, regulations and these rules.

**(2)** If the practice guidelines conflict or are inconsistent with these rules or an Act or regulation, the rules, Act or regulation prevails to the extent of the inconsistency.

**Type of hearing**

**1.14** The Appeals Commission may conduct a hearing by any one or more or any combination of the following:

- (a) an oral hearing of one or more of the parties in person of which notice of the hearing has been given to every party;
- (b) a telephone conference call or some other form of electronic technology allowing persons at a hearing to hear one another and to speak to one another;
- (c) a documents-only process.

**Communication with Appeals Commission**

**1.15(1)** All communication with the Appeals Commission by a party or prospective party to an appeal must be through the staff person assigned to the appeal, except in the circumstances described in subrule (2).

**(2)** Subrule (1) does not apply to

- (a) the filing of documents or applications related to an appeal;

- (b) to submissions made in the course of a hearing conducted by the Appeals Commission.

**Information note**

The staff person assigned to an appeal will usually be an appeals officer. In the absence of the officer another officer will be assigned to the file.



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## PART 2: APPEALS TO THE APPEALS COMMISSION

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**Summary overview of this Part:** This Part describes how to make an appeal to the Appeals Commission, what the Appeals Commission does when it receives an appeal, how other parties can respond to an appeal and how a person can become a party to an appeal.

### Information note

**Defined words:** Words and phrases used in this Part that have meanings defined in the Appendix [*Definitions*] include

- Act
- appeal
- Appeals Commission
- appellant
- assessment
- Board
- chief appeals commissioner
- compensation
- employer
- file
- party
- prescribed form
- record
- representative
- review body
- worker

**Division 1**  
**How to Make an Appeal**

**Starting an appeal**

**2.1** To start an appeal to the Appeals Commission a person who has a right to appeal to the Appeals Commission must

- (a) file with the Commission a notice of appeal in the prescribed form, and
- (b) file the notice of appeal within the time required by the Act or any extension of time permitted by the chief appeals commissioner under rule 2.4 [*Extending the deadline for filing appeals*].

**Information note**

Rule 1.3 [*What can be appealed to the Appeals Commission?*] describes what decisions can be appealed and the limitations on what can be appealed to the Commission.

An appeal is filed when it is received by the Appeals Commission in one of the ways described in rule 6.1 [*Filing documents with the Appeals Commission*]. Prescribed forms can be obtained from an Appeals Commission office or the Commission's website [www.appealscommission.ab.ca](http://www.appealscommission.ab.ca)

The time period for filing appeals is noted in rule 2.3 [*Deadline for appeals to be received*].

For circumstances when a prescribed form need not be used – see rule 6.6 [*Prescribed forms*].

**What information an appeal must contain**

**2.2(1)** To be a valid appeal, the notice of appeal must

- (a) be in writing, dated and signed by the appellant or the appellant's representative;
- (b) state the appellant's full name, address and telephone number, and the appellant's fax and cell phone numbers, if any;

- (c) state the claim number or account number and the date of the Board decision or review body decision being appealed;
  - (d) state the reason or reasons for the appeal for each decision appealed;
  - (e) attach or include with the notice of appeal a copy of each Board decision or review body decision being appealed;
  - (f) if the appellant is represented, include with the notice of appeal a notice of representation in the prescribed form, unless it has already been filed with the Appeals Commission.
- (2) Section 11(2) of the *Workers' Compensation Regulation* AR 325/2002 ceases to apply with respect to an appeal to the Appeals Commission and is replaced by subrule (1).

#### Information note

Section 11(2) of the *Workers' Compensation Regulation* says “Unless the review body or the Appeals Commission specifies otherwise” a review or appeal must contain certain information. Rule 2.2(1) above is the Appeal Commission “specifying otherwise” and so rule 2.2(1) replaces Regulation 11(2) with respect to information that must be contained in an appeal.

Key points to remember in making an appeal

- if your appeal involves more than one claim, provide all claim or account numbers. This ensures that the Appeals Commission is aware of all of the claims that might be relevant
- if you have a representative make sure a notice of representation is filed with the Appeals Commission. The rules about appointing representatives are in rule 1.7 [*Right to be represented*]. All further communications will be with your representative
- provide a copy of each decision you are appealing if there is more than one
- clearly identify the issues you are appealing. It helps if you
  - use the exact wording from the decision that you are appealing
  - identify the page number in the decision the issue is decided
- if you are appealing more than 3 issues, use the *Additional Appeal Issues* form
- it is best to use the *Notice of Appeal* prescribed form available from the Commission
- make sure the notice of appeal is signed and dated.

### Deadline for appeals to be received

**2.3(1)** In accordance with section 13.2(8) of the Act, a notice of appeal must be filed with the Appeals Commission within one year from the date that

- (a) a review body made its decision on a worker's claim for compensation under section 46 of the Act, or
- (b) the Board made a decision on an employer's assessment under section 120 of the Act,

unless the time for the appeal is extended under rule 2.4 [*Extending the deadline for filing appeals*].

**(2)** A notice of appeal from a Board determination about whether or not a worker, who is a party to a court action, is entitled to compensation under section 21(3) of the Act is not subject to a one year time limit.

### Extending the deadline for filing appeals

**2.4** The one year time limit within which an appeal must be filed may be extended under section 13.2(9) of the Act only if the chief appeals commissioner considers there is a justifiable reason for the delay.

#### Information note

Section 13.2(9) of the Act reads:

**(9)** Notwithstanding subsection (8), if the chief appeals commissioner, or the appeals commissioner to whom the chief appeals commissioner delegates the chief appeals commissioner's duties, considers there is a justifiable reason for a delay, that commissioner may extend, with or without conditions, the deadline set out in subsection (8).

## Division 2 **What the Appeals Commission Must Do After Receiving an Appeal**

### **Request for the Board's record**

**2.5** When a notice of appeal is filed with the Appeals Commission, the Appeals Commission must

- (a) send a written request to the Board asking the Board to send to the Appeals Commission the record of the matter being appealed within 10 days of the date of the Appeals Commission's request, and
- (b) assign a member of the Appeals Commission staff to the appeal and send notice of that fact to the parties and other persons as the circumstances require.

#### **Information note**

Under rule 1.15 [*Communication with Appeals Commission*] all communications outside a hearing must be to the staff person assigned. If the staff person assigned the file is away, another staff person will be assigned to attend to the file.

The Board, in accordance with sections 13.2(5) of the Act, must send its record to the Appeals Commission. Section 13.2(5) of the Act reads:

- (5)** Where a decision or determination is appealed, the Board shall, on request, forward to the Appeals Commission
  - (a) the records and information in its possession relating to the decision or determination, and
  - (b) the written reasons for the decision or determination.

### **Communication with representatives**

**2.6** Unless circumstances otherwise require, the Appeals Commission and the staff person assigned to an appeal must communicate with the representative of a party or prospective party, unless no representative has been appointed.

## Review of notice of appeal and the Board's record

**2.7** When the record of the matter under appeal is received by the Appeals Commission from the Board, the notice of appeal must be reviewed by the Appeals Commission to ensure that the information in the notice of appeal is complete and accurate.

## Acknowledgment of valid appeal

**2.8** If an appeal is valid, the Appeals Commission must send a letter to the appellant acknowledging receipt of a valid appeal.

## Problems with the appeal

**2.9(1)** An appeal is invalid if

- (a) the notice of appeal is incomplete because it does not contain or attach all the information required by rule 2.2 [*What information an appeal must contain*],
- (b) the notice of appeal is inaccurate or incorrect, or
- (c) the notice of appeal is not received in time or within an extension of time permitted under rule 2.4 [*Extending the deadline for filing appeals*].

**(2)** If the appeal is invalid but can be corrected, the Appeals Commission must send the appellant written notice of how to correct the appeal or that the appeal must be resubmitted.

**(3)** The Appeals Commission may refuse to process an appeal unless the appellant corrects the appeal or resubmits it in accordance with the Appeals Commission's notice.

**Information note**

The Appeals Commission cannot treat an appeal as a valid appeal unless it follows all the requirements of rule 2.2 [*What information an appeal must contain*]. The deadline and extensions of the deadline for receiving appeals are contained in rule 2.3 [*Deadline for appeals to be received*] and rule 2.4 [*Extending the deadline for filing appeals*].

The only exception to this rule would be if a waiver or variance was obtained under rule 1.5 [*Waiver of and non-compliance with the rules*].

**Withdrawal of an appeal**

**2.10(1)** The appellant may apply to withdraw an appeal by filing with the Appeals Commission, at any time before a decision is signed by the Appeals Commission, a written notice of request to withdraw the appeal.

**(2)** The Appeals Commission may

- (a) accept the request to withdraw the appeal if all the parties agree or if no other party objects to the request, or
- (b) if there is an objection to withdrawal of the appeal, decide whether to accept the request.

**Division 3**  
**Response to the Appeal**

**Notice to persons directly affected**

**2.11** After the Appeals Commission acknowledges receipt of an appeal as a valid appeal, the Appeals Commission must send a copy of the notice of appeal, the notice of acknowledgement of a valid appeal, and a notice of participation prescribed form to:

- (a) the Board, and
- (b) every person who, based on a review of the record provided by the Board, the Appeals Commission considers may have a direct interest in the appeal.

### **Time limit for response to an appeal**

**2.12(1)** If the Board or a person who receives a notice of appeal under rule 2.11 [*Notice to persons directly affected*] wishes to participate in the appeal, they must

- (a) complete the notice of participation prescribed form, and
- (b) file it with the Appeals Commission within 14 days of the date the Appeals Commission notifies them of the appeal under rule 2.11 [*Notice to persons directly affected*].

**(2)** If a completed notice of participation prescribed form is not filed in time, or if the person does not apply to extend the 14 day time limit before it expires, that person or the Board, as the case may be, is presumed not to wish to be a party or to participate in the appeal and the Appeals Commission may proceed in the absence of the Board or person without further notice to them.

**(3)** A person who is presumed not to wish to be a party under subrule (2) may subsequently apply to be a party under rule 2.14 [*Application to become a party to an appeal*].

## **Division 4** **Parties to the Appeal and their Rights**

### **Parties to an appeal**

**2.13** Unless the Appeals Commission decides otherwise, the parties to an appeal are:

- (a) the worker, if the worker is the appellant or otherwise has a direct interest in the appeal,
- (b) the Board, with the rights set out in section 13.2(6)(c) of the *Workers' Compensation Act*,
- (c) an employer having a direct interest in the appeal, and
- (d) any other person recognized by the Appeals Commission as a party to the appeal under rule 2.14 [*Application to become a party to the appeal*].

### Application to become a party to an appeal

**2.14(1)** A person who claims to have a direct interest in an appeal, and who wants to become a party to the appeal, must file with the Appeals Commission as soon as practicable an application for party status with a description of their interest in being granted party status in the appeal.

**(2)** The application for party status must

- (a) be in writing, signed and dated;
- (b) include the person's full name, postal address and telephone number, including fax and cell phone numbers, if they have them;
- (c) state the reasons why the person wishes to be a party to the appeal;
- (d) if the applicant is represented, include a notice of representation in accordance with rule 1.7(3) [*Right to be represented*].

**(3)** An application for party status is not complete unless it accurately contains all of the information required by subrule (2).

**(4)** If a person does not file a complete application for party status, or having filed a complete application does not appear, without reasonable explanation, at the hearing of an application to decide party status, that person's interest is abandoned and the Appeals Commission may decide the application without further notice to that person.

### Rights of a party to an appeal

**2.15(1)** Subject to any limitations imposed under section 2.13 [*Parties to an appeal*], in addition to the rights of a party under the Act, a party to an appeal has the right to:

- (a) make representations on the type of hearing of an appeal or other matter arising in the course of an appeal,
- (b) receive a copy of documents in the Appeals Commission's possession that are related to the appeal,
- (c) present evidence,
- (d) call witnesses,
- (e) question or cross-examine witnesses who give evidence at a hearing,

- (f) make submissions on the evidence and issues under appeal,
  - (g) receive copies of the written submission and evidence provided to the Appeals Commission by the other parties to the appeal, and
  - (h) receive a copy of the Appeals Commission decision.
- (2) The Appeals Commission may give directions or impose conditions on the matters described in subrule (1).

### Appeal documents package

**2.16** The Appeals Commission must send to every party to an appeal a dated letter enclosing an appeal documents package containing

- (a) documents that the Appeals Commission considers to be related to the appeal from the record received by the Appeals Commission from the Board,
- (b) a certificate of readiness to proceed in the prescribed form,
- (c) a list of additional documents in the prescribed form,
- (d) a request for hearing in the prescribed form, and
- (e) any other material related to the appeal that the Appeals Commission considers appropriate.

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## PART 3: GETTING READY FOR THE HEARING

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**Summary overview of this Part:** This Part describes what documents must be filed to get ready for an appeal hearing by the Appeals Commission, the way in which constitutional issues must be raised, and the scheduling of a hearing date.

The Part also describes how pre-hearing issues are dealt with, including obtaining notices to witnesses to attend proceedings or to produce documents, and sets out rules about delaying or rescheduling hearings and the dismissal of an appeal for delay.

### Information note

**Defined words:** Words and phrases used in this Part that have meanings defined in the Appendix [*Definitions*] include

- Act
- appeal
- Appeals Commission
- appellant
- Board
- documents-only
- file
- party
- prescribed form
- rules

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## PART 3: GETTING READY FOR THE HEARING

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### Division 1 Readiness for the Hearing

#### Certificate of readiness and request for hearing

**3.1(1)** Every party who wishes to participate in an appeal hearing must file with the Appeals Commission, within 21 days of the date of the letter enclosing the appeal documents package,

- (a) a completed certificate of readiness to proceed in the prescribed form,
  - (b) a request for hearing in the prescribed form, containing the information required by rule 3.2 [*Request for hearing form*], and
  - (c) if required, a list of additional documents, with copies of them, on which the party intends to rely or to refer to.
- (2)** The Appeals Commission may refuse to schedule a hearing date if the appellant,
- (a) does not file the certificate of readiness to proceed and a completed request for hearing in the prescribed form, or
  - (b) does not file or incorrectly files any other form or material.
- (3)** If the appellant does not remedy a deficiency, the Appeals Commission may, after giving notice of its intention to consider dismissing the appeal, dismiss the appeal for delay in proceeding in accordance with the procedure described in rule 3.13 [*Dismissal of appeal for delay*].
- (4)** If the Board or other party
- (a) does not file a certificate of readiness to proceed or does not apply to the Appeals Commission to extend the 21 day time-limit before it expires, or
  - (b) does not file or incorrectly files any other form or material,

the non-compliance is not a reason for delaying the scheduling of a date for the appeal hearing.

## Request for hearing form

**3.2** The request for hearing in the prescribed form filed with the Appeals Commission must include the following information:

- (a) the party's preference, with reasons, for either an oral hearing or a documents-only hearing;
- (b) if an oral hearing is preferred, whether that party prefers to attend in-person or through conference telephone call, or some other form of electronic technology allowing persons to hear one another;
- (c) if an oral hearing is preferred, whether that party requests that the proceedings be recorded;
- (d) any special hearing requirements that the party may have;
- (e) whether the party will be calling witnesses and, if so, their names, accompanied by a summary of evidence each witness will give;
- (f) whether an interpreter will be required, and if so identify the language or languages for which interpretation will be required.

### Information note

The Appeal Commission decides whether a hearing is to be recorded under rule 4.3 [*Recording the hearing and transcripts*].

## Interpreters

**3.3(1)** The Appeals Commission may direct that an interpreter be present at a hearing whether or not a request for an interpreter is made.

**(2)** When an interpreter is or may be required, the Appeals Commission is responsible for providing an independent interpreter at its cost.

## Division 2 Constitutional Questions

### Notice of constitutional question

**3.4(1)** A party who intends to raise a question of constitutional law before the Appeals Commission relating to the distribution of powers must first provide written notice of their intention to do so, at least 14 days before the scheduled hearing date, to

- (a) the Attorney General of Canada,
- (b) the Minister of Justice of Alberta and the Attorney General of Alberta, and
- (c) every party.

**(2)** If the notice is not provided, the Appeals Commission must not consider the constitutional question.

#### Information note

For more information on constitutional issues, see rule 1.3(3) [*What can be appealed to the Appeals Commission?*] and the information note following that rule.

### Referral of constitutional question to the court

**3.5(1)** Even when proper notice is given under rule 3.4 [*Notice of constitutional question*], the Appeals Commission may, instead of deciding a constitutional question relating to the distribution of powers, direct the party giving the notice to apply to the court to have the question determined, if the Commission is of the opinion that the court is the more appropriate forum in which to decide the question.

**(2)** If the Appeals Commission directs a party to apply to the court, the Appeals Commission must adjourn its proceeding, as it relates to the constitutional question, until the court decides the matter.

**Information note**

For more information on constitutional issues, see rule 1.3(3) [*What can be appealed to the Appeal Commission?*]

**Division 3**  
**Scheduling the Hearing and Deciding**  
**PRE-HEARING ISSUES AND APPLICATIONS**

**Scheduling the appeal hearing**

**3.6(1)** The Appeals Commission must schedule a date, time and place for an appeal hearing if

- (a) it has received from the appellant a completed certificate of readiness to proceed, a completed request for hearing form, and if required, a list of additional documents and copies of them, and
  - (b) there is no unresolved application or issue that should delay the scheduling of a hearing.
- (2)** If a party provides a list of additional documents on which the party intends to rely, the Appeals Commission must provide copies of them to every other party.

**Pre-hearing conference**

**3.7(1)** The Appeals Commission may require the parties to attend or participate in a pre-hearing conference to discuss procedural or substantive issues, or both, relating to the conduct of the appeal.

**(2)** A pre-hearing conference may, without limitation, deal with all or any of the following and the Appeal Commission may make an appropriate order or direction under rule 1.12 [*General authority of the Appeals Commission*]:

- (a) identification of the issues;
- (b) determination of new evidence or additional evidence, including whether any new medical or other expert evidence is required and the time-frames for the production of that evidence;

- (c) procedural issues, including whether an oral hearing will be convened and, if so, when the hearing should be scheduled, and whether a hearing should be recorded;
- (d) the issue of a notice to attend the hearing or a notice to produce documents, or both;
- (e) an application for an order or direction under any other rule.

### Expert and other witnesses

**3.8(1)** The Appeals Commission may direct a party to file with the Appeals Commission and send to every other party the qualifications and a summary of the evidence of a witness, including a medical or technical witness, that the party intends to rely on at the hearing.

**(2)** The qualifications and summary must be filed at least 14 days before the scheduled hearing date.

### Application to obtain evidence from a witness

**3.9(1)** In accordance with section 13.1(6) of the Act, a party may apply to the Appeals Commission for an order that a witness, residing in or outside Alberta, be questioned before a person appointed by the Appeals Commission and to have the questions and answers recorded in writing for use in the appeal hearing in a manner similar to that prescribed by the *Alberta Rules of Court*.

**(2)** The application must:

- (a) state why the questioning is required, and
- (b) be submitted to the Appeals Commission not less than 30 days before the scheduled hearing date.

**(3)** The Appeals Commission may refuse to make an order under this rule if, in the opinion of the Appeals Commission,

- (a) the witness could or should attend the hearing,
- (b) the evidence sought is not relevant to the appeal, or

- (c) an order is inappropriate in the circumstances.

**Information note**

Section 13.1(6) of the Act reads:

(6) The Appeals Commission may cause depositions of witnesses residing in or outside Alberta to be taken before any person appointed by the Appeals Commission in a manner similar to that prescribed by the *Alberta Rules of Court*.

**Notice to attend or notice to produce documents**

**3.10(1)** The Appeals Commission may issue a notice to attend or a notice to produce documents, or both, in accordance with section 13.1(5) of the Act.

(2) An application for a notice to attend or a notice to produce documents must be in writing and,

- (a) state the reasons why the notice is required, including an explanation of why a witness or a document is relevant to the appeal, and
- (b) in the case of a notice to produce documents, describe the documents in sufficient detail that the person to whom the notice is directed is able to identify the requested documents without undue difficulty.

**Information note**

Section 13.1(5) of the Act gives the Appeals Commission the same powers as the Court of Queen's Bench for compelling the attendance of a witness and examining that witness under oath at a hearing and for compelling the production and inspection of books, papers, documents and things. This can be done through the issuance of a Notice to Attend and a Notice to Produce Documents, respectively. Section 13.1(5) reads:

(5) The Appeals Commission has the same powers as the Court of Queen's Bench for compelling the attendance of witnesses and examining them under oath and for compelling the production and inspection of books, papers, documents and things.

### **Refusal to issue a notice to attend or notice to produce**

**3.11** The Appeals Commission may refuse to issue a notice to attend or a notice to produce documents, or both, if the Appeals Commission considers

- (a) the evidence or documents sought are not relevant to the appeal,
- (b) the reason for the request is insufficient, or
- (c) the evidence is already available from another source.

### **Application to re-schedule a hearing**

**3.12(1)** If a party wishes to delay or reschedule a hearing, the party must

- (a) apply in writing stating the reason for delaying or rescheduling the hearing, and
- (b) send a copy of the application to every other party, seeking their consent to the application.

**(2)** The applicant must notify the Appeals Commission as soon as possible whether the other parties consent or object to the delay or rescheduling of the hearing.

**(3)** The Appeals Commission must decide the application whether or not the parties consent to the delay or rescheduling of the hearing.

### **Dismissal of appeal for delay**

**3.13(1)** If

- (a) an appeal cannot be processed because an error, inaccuracy or deficiency has not been corrected, or there is some other non-compliance with the Act, regulations or these rules, and 6 months have passed from the date the Appeals Commission notified the appellant of the error, inaccuracy, deficiency or non-compliance, or
- (b) a hearing date has been delayed or a scheduled hearing date has been cancelled and a hearing date is not re-scheduled and 6 months has passed since the delay or cancellation,

the Appeals Commission must, if it intends to consider dismissing the appeal for delay in proceeding, give notice to the parties of its intention and may request oral or written submissions, or both, from the parties.

(2) After considering any submissions received, the Appeals Commission may do all or any of the following:

- (a) extend a period or state a period for an action to be taken;
- (b) issue directions with respect to the further processing of the appeal;
- (c) schedule a hearing date;
- (d) dismiss the appeal for delay in proceeding.



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## PART 4: THE HEARING AND DECISION

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**Summary overview of this Part:** This Part describes how the Appeals Commission manages hearings, the evidence it considers, and what happens if a party does not attend a hearing. The Part then describes the Appeals Commission's decisions, their distribution and, if necessary, how decisions can be corrected or clarified.

### Information note

**Defined words:** Words and phrases used in this Part that have meanings defined in the Appendix [*Definitions*] include

- Act
- appeal
- Appeals Commission
- appellant
- Board
- chief appeals commissioner
- party
- record
- review body
- rules

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## PART 4: THE HEARING AND DECISION

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### Division 1 The Hearing

#### Scope of hearing

**4.1(1)** Under section 13.1(1) of the Act, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under the Act and the regulations in respect of an appeal.

**(2)** Consequently, the Appeals Commission is not restricted to reviewing only those issues stated in the notice of appeal, but may consider all issues and questions that it concludes arise under the Act and the regulations in respect of the appeal.

**(3)** This also means that the Appeals Commission may hear and decide an appeal as if the matter had not previously been decided and may consider any evidence obtained by it or presented to it that it considers to be relevant to the appeal.

#### Information note

Section 13.1(1) of the Act reads:

- (1)** Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of
- (a) appeals from decisions under section 46 made by a review body appointed under section 45,
  - (b) appeals from decisions under section 120 made by a review body appointed under section 119,
  - (c) appeals from determinations of the Board under section 21(3), and
  - (d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,
- and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court.

### Private hearings and observers

**4.2(1)** All hearings of the Appeals Commission must be conducted in private unless the Appeals Commission otherwise directs.

**(2)** The Appeals Commission may permit a person to observe a hearing on any conditions that the Commission considers appropriate.

### Recording the hearing and transcripts

**4.3(1)** The Appeals Commission may record a hearing, or part of it, in a manner that can be transcribed to provide a written record of the proceeding.

**(2)** If a party wishes to obtain all or part of a transcript of proceedings recorded in accordance with a direction of the Appeals Commission it may do so at its own cost, unless the Appeals Commission directs the cost to be paid by the Commission.

#### Information note

For transcripts of recorded proceedings a party may contact the Appeals Commission.

### Respectful proceedings

**4.4(1)** A chair of an Appeals Commission panel has the authority to control proceedings to ensure that a hearing is conducted in a manner that is respectful of all participants, Appeals Commission members and Appeals Commission staff.

**(2)** A disruptive, disrespectful or threatening person may be ordered by the panel chair to leave the hearing room or to be removed from the hearing room.

**(3)** A person who is disruptive, disrespectful or threatening to Appeals Commission staff may also have their access to Appeals Commission staff or premises restricted by the chief appeals commissioner, or made subject to conditions, whether the disruption, disrespect, or threat occurs before, at or after a hearing, and wherever it occurs.

### Exclusion of witnesses

**4.5(1)** Other than parties in a hearing who are or may be witnesses, the Appeals Commission may exclude other witnesses from the hearing room except when they give their evidence.

**(2)** The Appeals Commission may require a party to give evidence before any other witnesses are called to give evidence on behalf of the party.

**(3)** Except with consent of the Appeals Commission, there must be no communication with an excluded witness about evidence given at the proceeding during their absence until the witness gives evidence.

### Non-attendance at hearing

**4.6(1)** If a party does not attend a scheduled hearing, the Appeals Commission may

- (a) decide to hear the matter on the basis of the documents before the Appeals Commission, and the representations of the party or parties attending the hearing,
- (b) adjourn the matter to a later date, subject to any conditions the Appeals Commission may impose, or
- (c) if the appellant does not attend, adjourn the hearing and in accordance with rule 3.13 [*Dismissal of appeal for delay*] give notice to the parties of its intention to consider whether or not to dismiss the appeal for delay in proceeding.

**(2)** A party, other than the appellant, who has been given notice of a hearing and who does not attend the hearing is presumed to have waived their right to receive and respond

- (a) to evidence or submissions presented at the hearing, and
- (b) to evidence or submissions received by the Appeals Commission after the hearing, if any.

### **Matters the Appeals Commission must consider**

**4.7(1)** Under section 13.2(2), (3) and (4) of the Act,

- (a) in considering an appeal from a decision under section 46 of the Act, the Appeals Commission must consider the records of the claims adjudicator and the review body relating to the claim;
- (b) in considering an appeal from a decision under section 120 of the Act, the Appeals Commission must consider the records and information available to the review body relating to the matter under consideration;
- (c) in considering an appeal from a determination of the Board under section 21(3) of the Act, the Appeals Commission must consider the records and information available to the Board relating to the matter under consideration.

**(2)** The Appeals Commission must also consider all relevant evidence submitted by a party that relates to the appeal and that is submitted to the Appeals Commission in accordance with these rules.

**(3)** The Appeals Commission may admit any evidence, including hearsay evidence, that it considers relevant to the appeal, whether or not a court would admit the same evidence. However, the Appeals Commission may decide not to admit evidence that it considers to be repetitious, serves no purpose, or is not relevant.

### **Form of evidence**

**4.8** In addition to the appeal documents package, the Appeals Commission may consider evidence in any one or more or in any combination of the following forms:

- (a) in written form;
- (b) by affidavit or affirmation;
- (c) orally in person or by telephone conference call or other electronic means;
- (d) any other manner the Appeals Commission considers appropriate.

### **Questioning by Appeals Commission**

**4.9** The Appeals Commission may question a witness at a hearing, including asking questions about the record or any other evidence or information before it.

### **Evidence need not be under oath or affirmation**

**4.10** A witness need not give evidence under oath or affirmation that the evidence will be the truth, the whole truth and nothing but the truth unless the Appeals Commission so requires or the witness so requests.

### **Agreed statement of facts**

**4.11** The Appeals Commission may accept a statement of facts agreed to by the parties, without proof or evidence of the facts stated.

### **Adjournment during hearing**

**4.12** The Appeals Commission may adjourn a hearing at any time during a hearing and reschedule the hearing to a new date, time or location or until conditions specified by the Appeals Commission are met.

### **Argument and written submissions**

**4.13(1)** After the parties have had an opportunity to present evidence, the Appeals Commission must give every party at the hearing an opportunity to make a final argument.

**(2)** The Appeals Commission may require the parties to submit written argument on any issue and, if it does so, must direct the order and timing of the submission of written argument and rebuttal argument.

**(3)** A party should include in their final argument the specific remedy, direction or decision they want the Appeals Commission to make.

## Division 2 Appeals Commission Decisions

### Who makes the decision

**4.14(1)** Only the commissioners on a panel that hear or consider a matter may decide that matter.

- (2) The decision must be in writing, and
- (a) include findings of fact on which the decision is based,
  - (b) state the conclusion reached, and
  - (c) give reasons for the decision.

### What controls Appeals Commission decisions?

**4.15(1)** When the Appeals Commission makes a decision it must follow

- (a) the *Workers' Compensation Act*;
- (b) the *Workers' Compensation Regulation* (AR 325/2002);
- (c) when it is applicable, the *Firefighters' Primary Site Cancer Regulation* (AR 102/2003);
- (d) any other Act or regulation that applies to the matter the Appeals Commission has to make a decision about.

(2) The Appeals Commission is also bound by the Workers' Compensation Board of Directors' policy relating to the matter under appeal. However, that policy is not binding on the Appeals Commission if it is inconsistent with the Act or regulations under the Act.

### New or additional information

**4.16** If, before a decision is made on an appeal, evidence that was not available before the hearing becomes available, or if evidence available before the hearing but which could not, on reasonable and justifiable grounds, be produced at the hearing, becomes available, the Appeals Commission may

- (a) consider whether the evidence should be presented;

- (b) provide an opportunity for every other party to review the information and make submissions on it and its relevance;
- (c) consider reopening the hearing to hear evidence related to the information;
- (d) consider giving notice to the Board and other parties to hear representations on the application of Board policy, the Act or the regulations with respect to the information.

### What decisions can the Appeals Commission make?

**4.17** Under section 13.2(6) of the Act, the Appeals Commission may

- (a) confirm, reverse, or vary a decision under appeal;
- (b) refer any matter back to the review body or Board that made the decision for further action or decision, with or without directions.

#### Information note

Under section 13.2(7) of the Act the Appeals Commission, on request, may clarify a direction. Section 13.2(7) reads:

- (7) At the request of an affected person or the Board, the Appeals Commission may clarify any directions given in respect of a decision.

### Signing the decision

**4.18** A decision of a panel of the Appeals Commission must be signed on behalf of the panel by the panel chair, or in that person's absence, by another commissioner on the panel.

### Effective date of decision

**4.19** The decision of a panel of the Appeals Commission is the official decision of the Appeals Commission effective on and after the date the decision is signed.

### Notification and distribution of decision

**4.20(1)** The Appeals Commission must send each decision it makes on an appeal to

- (a) the appellant,
- (b) the Board, and
- (c) every other party to the appeal.

**(2)** The decision, or a version of it modified to protect confidentiality or privacy, must also be placed on the Appeals Commission's web site unless the Appeals Commission decides that to do so would be inappropriate or unnecessary in the circumstances.

### Technical errors and omissions

**4.21(1)** Subject to rule 4.22 [*Clarification*], after a decision becomes an official decision of the Appeals Commission, the panel that heard and decided the appeal has no further authority to review and change their signed decision, other than to correct

- (a) obvious slips, typographical errors,
- (b) errors of calculation,
- (c) misstatements and technical errors, or
- (d) omissions in its decision.

**(2)** These corrections may be made without first giving notice to the parties but the parties must subsequently be promptly notified of the correction.

### Clarification

**4.22** Under section 13.2(7) of the Act, the panel of the Appeals Commission making a decision may clarify any directions given in respect of a decision at the request of an affected person or the Board.

**Information note**

Section 13.2(7) of the Act reads:

(7) At the request of an affected person or the Board, the Appeals Commission may clarify any directions given in respect of a decision.

**Finality of decision**

In accordance with section 13.1(9) of the Act, no proceedings by or before the Appeals Commission shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Appeals Commission or any member of the Appeals Commission in respect of any act done or decision made in the honest belief that it was within the jurisdiction of the Appeals Commission.

An appeal on a question of law or jurisdiction law or jurisdiction may be made to the Court of Queen's Bench under section 13.4 of the Act.

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## PART 5: RECONSIDERATION OF DECISIONS

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***Summary overview of this Part:*** This Part describes when and how the Appeals Commission may reconsider a decision made by it.

### Information note

***Defined words:*** Words and phrases used in this Part that have meanings defined in the Appendix [*Definitions*] include

- Act
- Appeals Commission
- party

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## PART 5: RECONSIDERATION OF DECISIONS

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### Application for reconsideration

**5.1(1)** In accordance with section 13.1(7) and (8) of the Act, on application by a person with a direct interest in a decision made by the Appeals Commission, the Appeals Commission may reconsider a matter it has dealt with, including a question, issue, order, direction or determination that the Appeals Commission has dealt with in a decision.

(2) The application must:

- (a) be in writing,
- (b) identify the date and decision number of the decision,
- (c) identify the issue or issues in the decision for which reconsideration is requested,
- (d) set out the reasons for the application for reconsideration,
- (e) set out the remedy sought, and
- (f) meet the time limitations of rule 5.2 [*Conditions on reconsideration applications*].

(3) The Appeals Commission may also decide to reconsider a matter it has dealt with on its own motion.

### Conditions on reconsideration applications

**5.2(1)** Except when an application for reconsideration is made on the basis of new or unavailable evidence described in rule 5.5(3) [*Criteria for reconsideration*], a person may make an application under rule 5.1(1) [*Application for reconsideration*] only once in respect of a matter the Appeals Commission has dealt with.

(2) An application for reconsideration must be made to the Appeals Commission under rule 5.1 [*Application for reconsideration*]

- (a) within 6 months of the date that the matter the subject of the application was decided, or

- (b) in the case of an application based on new or unavailable evidence described in rule 5.5(3) [*Criteria for reconsideration*], within 6 months of the date the evidence was discovered or became available.

### Reconsideration Threshold Panel

**5.3** An application for reconsideration under rule 5.1(1) [*Application for reconsideration*] by a person with a direct interest, or if the Appeals Commission wishes to consider acting on its own motion, that motion, must be referred to a panel of the Appeals Commission called the Reconsideration Threshold Panel.

### Written submissions for reconsideration threshold review

**5.4** Before the Threshold Review Panel considers an application or motion every party must be given an opportunity to make representations on whether the threshold for reconsideration of an Appeals Commission decision has been met.

### Criteria for reconsideration

**5.5(1)** The Reconsideration Threshold Panel must review an application or motion for reconsideration and only decide that a matter must be reconsidered if the application is made in time and the threshold requirements for reconsideration under subrule (2) are met or subrule (3) applies.

**(2)** The threshold requirements for reconsideration are that:

- (a) the decision shows an obvious and important error of law or jurisdiction;
- (b) the decision shows an important error of fact, or an error of mixed fact and law, in the decision that affects the decision;
- (c) the decision was based on a process that was obviously unfair or unjust.

**(3)** A decision may also be reconsidered if the Threshold Reconsideration Panel is satisfied that new evidence is now available or that evidence, not available on reasonable and justifiable grounds at the hearing, is now available, and that the evidence

- (a) is relevant to the decision, and
- (b) is likely to have had an impact on the decision.

## Decision to reconsider

**5.6(1)** If the Reconsideration Threshold Panel decides that a matter should be reconsidered, the Appeals Commission must then, under section 13.1(7) of the Act, reconsider the matter.

**(2)** After reconsideration conducted in any manner the Appeals Commission considers appropriate, the Appeals Commission may confirm, rescind or amend any decision, direction or order previously made by the Commission.

### Information note

Section 13.1(7) of the Act reads:

**(7)** The Appeals Commission, at its discretion on the application of a person with a direct interest in the matter, or on its own motion, may reconsider any matter that it has dealt with and may confirm, rescind or amend any decision or order previously made by it.

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## PART 6: TECHNICAL RULES

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**Summary overview of this Part:** This Part describes how documents are to be filed with the Appeals Commission and describes how documents may be sent to parties. The Part also permits the Appeals Commission to specify an alternative method of sending documents if the prescribed methods will not work, or of dispensing with sending the document altogether if the circumstances warrant.

The chief appeals commissioner is authorized to prescribe forms for the rules and the rules permit the information in prescribed forms to be provided in other ways.

### Information note

**Defined words:** Words and phrases used in this Part that have meanings defined in the Appendix [*Definitions*] include

- appeal
- Appeals Commission
- chief appeals commissioner
- file
- party
- prescribed form
- rules

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## PART 6: TECHNICAL RULES

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### Filing documents with the Appeals Commission

**6.1(1)** A document is filed under these rules when it is received in an office of the Appeals Commission.

**(2)** A document may be received by the Appeals Commission by

- (a) ordinary, registered or double registered mail;
- (b) fax;
- (c) personal delivery of a document, or by a courier or messenger.

**(3)** A person who files a document with the Appeals Commission must

- (a) include their name, address, and telephone number and the name and claim number to which the document relates, and
- (b) direct the document to the attention of the Appeals Commission staff member assigned to the appeal.

### Service of court documents on the Appeals Commission

**6.2** A court process may be served on the Appeals Commission by serving

- (a) the chief appeals commissioner,
- (b) a vice-chair of the Appeals Commission,
- (c) legal counsel for the Appeals Commission, or
- (d) by other means prescribed by the *Alberta Rules of Court*.

### Sending documents

**6.3(1)** A document permitted or required to be sent by the Appeals Commission or by a party under these rules may be

- (a) sent by ordinary, registered or double registered mail;

- (b) sent by fax;
- (c) delivered personally or by a courier or messenger;
- (d) sent by any other means approved by the Appeals Commission.

**(2)** A person who sends a document to a party must state the sender's name, address and telephone number, and the name of the claim number to which the document relates.

**(3)** If sending a document by a method described in subrule (1) is impracticable or impossible, the Appeals Commission may give directions for substitutional service, or dispense with sending the document, as it considers appropriate.

### **Presumption that documents sent are received**

**6.4** A document that is permitted or is required by these rules to be sent to a person is properly sent and presumed to have been received if

- (a) it is sent by a method described in rule 6.3(1) [*Sending documents*], and
- (b) is sent to the last known postal address or fax number provided by that person for receiving documents related to an appeal.

### **Change of address**

**6.5(1)** A party must file with the Appeals Commission and send to every other party notice of any change of postal address, or any change of telephone or fax numbers.

**(2)** The notice must be in writing and filed and sent not later than 10 days after the change occurs.

### **Prescribed forms**

**6.6(1)** The chief appeals commissioner is authorized to prescribe forms for use under these rules.

**(2)** Even though these rules require a prescribed form to be used, it is sufficient if all the information required by the form is provided without using the form itself.

**(3)** A prescribed form may be altered as the particular circumstances of an appeal require.

## *Interpretation Act*

**6.7** The *Interpretation Act* applies to these rules.

### **Information note**

The *Interpretation Act* contains rules for interpreting legislation, including, for example

- singular includes the plural
- the counting of time
- when documents sent by mail are deemed to have been received.

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## **APPENDIX: DEFINITIONS**

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## Definitions

### *Words and phrases having defined meanings in these rules*

1 In these rules,

*Act* means the *Workers' Compensation Act*;

*appeal* means an appeal to the Appeals Commission under the Act and these rules;

*Appeals Commission* means the Appeals Commission continued under section 10 of the Act and includes a panel of the Appeals Commission if so authorized under section 13.1(2) of the Act;

#### **Information note**

Section 13.1(2) of the Act reads:

(2) The chief appeals commissioner may authorize a panel of 2 or more appeals commissioners to act on behalf of the Appeals Commission under subsection (1) and that panel may exercise the powers of the Appeals Commission for that purpose.

*appellant* means the person who files an appeal under these rules or a representative of that person;

*assessment* has the same meaning as it has in the Act;

#### **Information note**

In the Act, *assessment* means the process by which the premium that is payable under this Act by an employer is determined;

*Board* means The Workers' Compensation Board under the Act;

*chief appeals commissioner* means the person appointed under section 10(1) of the Act as chief appeals commissioner, and includes any other commissioner designated under section 10(6) of the Act to act in that person's place during a temporary absence;

**compensation** has the same meaning as it has in the Act;

**Information note**

**compensation** is defined in the Act as:

- (f) “compensation” includes medical aid and vocational rehabilitation;

**documents-only** means a hearing held on the basis of the record provided to the Appeals Commission by the Board in respect of an appeal, written submissions, and other agreed written evidence only;

**employer** has the same meaning as it has in the Act;

**Information note**

**employer** is defined in the Act as:

- (j) “employer” means
  - (i) an individual, firm, association, body or corporation that has, or is deemed by the Board or this Act to have, one or more workers in the individual’s or its service and includes a person considered by the Board to be acting on behalf of that individual, firm, association, body or corporation,
  - (ii) a proprietor whose application is approved under section 15,
  - (iii) a corporation where the application of a director of the corporation is approved under section 15, and
  - (iv) a partnership where the application of a partner in the partnership is approved under section 15, and includes the Crown in right of Alberta and the Crown in right of Canada insofar as the latter, in its capacity as employer, submits to the operation of this Act;

**file** means receipt by the Appeals Commission of any document or thing that may or must be filed with the Appeals Commission under the Act, regulations under the Act, or these rules;

**party** means a party to an appeal determined under rule 2.13 [*Parties to an appeal*];

**practice guideline** means a practice guideline issued by the chief appeals commissioner under rule 1.13 [*Practice guidelines*];

**prescribed form** means a form prescribed for use under these rules by the chief appeals commissioner under rule 6.6 [*Prescribed forms*] modified as circumstances require for use under these rules;

**record** means the records and information that the Board is required to provide the Appeals Commission, under sections 13.2(2), (3) and (4) of the Act, and includes, without limitation, the records and information in the Board's possession relating to the decision under appeal, and the written reasons for the decision;

**representative** means a person who is appointed and authorized to act as the representative of a party and in respect of whom a notice of representation has been filed with the Appeals Commission under rule 1.7 [*Right to be represented*];

**review body** means the review body appointed under section 45 of the Act or the review body appointed under section 119 of the Act;

**rules** includes the Appendix [*Definitions*] to these rules and prescribed forms;

**worker** has the same meaning as it has in the Act.

#### **Information note**

**worker** is defined in the Act as

- (z) “worker” means a person who enters into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise, and includes
  - (i) a learner,
  - (ii) a person whose application to the Board under section 15 is approved, and
  - (iii) any other person who, under this Act or under any direction or order of the Board, is deemed to be a worker,but does not include a person who ordinarily resides outside Canada and is employed by an employer who is based outside Canada and carries on business in Alberta on a temporary basis;

**2** Words in the Act have the same meaning in these rules unless the word is otherwise defined in rule 1 of this Appendix.