

Appeal Rules

Effective June 1, 2020

APPEALS
COMMISSION
FOR ALBERTA WORKERS' COMPENSATION

Alberta  Government

For more information, contact the Appeals Commission for Alberta Workers' Compensation at:

Edmonton

1100, 10405 Jasper Avenue
Edmonton, AB T5J 3N4
Tel: 780-412-8700
Fax: 780-412-8701

Calgary

2300, 801 – 6th Avenue SW
Calgary, AB T2P 3W2
Tel: 403-508-8800
Fax: 403-508-8822

or, through our web site at www.appealscommission.ab.ca

Information note

What these rules do

Appeals Commission rules govern its practice and procedure 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.

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. Summary overviews on the title page of each Part are another feature designed to help readers. The summary overviews give a brief description of what each 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*.

Contents

Rule #

PART 1: FUNDAMENTAL RULES

Division 1

Purpose, Application, and Jurisdiction

What is the purpose of the rules?.....	1.1
What legislation governs the Appeals Commission?.....	1.2
What can be appealed to the Appeals Commission?	1.3
Information notes and summary overviews	1.4
Waiver of and non-compliance with the rules	1.5
Conflict between the rules, practice guidelines, Acts and regulations.....	1.6

Division 2

Representatives

Right to be represented	1.7
Giving notice to a representative is notice to a participant or party.....	1.8
Representative ceasing to act.....	1.9

Division 3

Appeals Commission and Communication with the Commission

Composition of Appeals Commission	1.10
Appeals Commission: general authority	1.11
Chief appeals commissioner: general authority.....	1.12
Type of hearing.....	1.13
Communication with Appeals Commission	1.14

PART 2: APPEALS TO THE APPEALS COMMISSION

Division 1

How to Make an Appeal

Starting an appeal	2.1
Notice of appeal.....	2.2
Deadline for appeals to be received.....	2.3

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

Communication with representatives.....2.4
Acknowledgment of valid appeal2.5
Problems with the appeal.....2.6
Withdrawal of an appeal.....2.7

**Division 3
Response to the Appeal**

Notice to parties.....2.8
Time limit for response to an appeal2.9

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

Participants in an appeal2.10
Application to become a party to an appeal.....2.11
Rights of a participant in an appeal2.12
Pre-hearing information.....2.13
Appeals document package2.14

PART 3: GETTING READY FOR THE HEARING

**Division 1
Readiness for the Hearing**

Disclosure and preliminary issues3.1
Expert witnesses3.2
Interpreters.....3.3

**Division 2
Constitutional Questions**

Notice of constitutional question.....3.4
Referral of constitutional question to the court.....3.5

Division 3
Scheduling the Hearing and Deciding
Pre-hearing Issues and Applications

Scheduling the appeal hearing3.6
Pre-hearing conference3.7
Preliminary issues3.8
Application to obtain evidence from a witness3.9
Notice to attend or notice to produce documents3.10
Application to re-schedule a hearing3.11
Recording the hearing3.12
Dismissal of appeal for delay3.13

PART 4: THE HEARING AND DECISION

Division 1
The Hearing

Scope of hearing4.1
Private hearings and observers4.2
Respectful proceedings4.3
Exclusion of witnesses4.4
Non-attendance at in-person hearing4.5
Matters the Appeals Commission must consider4.6
Form of evidence4.7
Questioning by Appeals Commission4.8
Evidence need not be under oath or affirmation4.9
Agreed statement of facts4.10
Adjournment during hearing4.11
Argument and written submissions4.12

Division 2
Appeals Commission Decisions

Who makes the decision4.13
What controls Appeals Commission decisions?4.14
New or additional information4.15
What decisions can the Appeals Commission make?4.16
Signing the decision4.17
Effective date of decision4.18
Notification and distribution of decision4.19
Technical errors and omissions4.20
Clarification4.21

PART 5: RECONSIDERATION OF DECISIONS

Application for reconsideration5.1
Conditions on reconsideration applications5.2
Reconsideration process5.3
Criteria for preliminary review5.4
Submissions for reconsideration threshold review5.5
Criteria for reconsideration5.6
Decision to reconsider5.7

PART 6: TECHNICAL RULES

Filing documents with the Appeals Commission6.1
Service of court documents on the Appeals Commission.....6.2
Sending documents6.3
Presumption that documents sent are received6.4
Change of address6.5
Interpretation Act6.6
Retention and disposition of appeal records6.7
Repeal of former rules6.8
Coming into force6.9

APPENDIX: DEFINITIONS: *Words and phrases having defined meanings in these rules*

PART 1: FUNDAMENTAL RULES

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. It also describes how participants 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
- participant
- party
- practice guideline
- prescribed form
- representative
- review body
- rules
- worker

PART 1: FUNDAMENTAL RULES

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*, Alta Reg 325/2002;
- (b) the *Firefighters' Primary Site Cancer Regulation*, Alta Reg 102/2003; and
- (c) the *Medical Panels Regulation*, Alta Reg 21/2018.

Information note

The regulations referred to are the applicable regulations as of September 1, 2018. For the legislation and other matters governing Appeals Commission decisions, see rule 4.14 [*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) applications by a worker to have an issue referred to a Medical Panel under section 46.3(3) of the Act;
- (e) applications by a worker or employer for interim relief under section 13.1(2.2)(b) of the Act; and
- (f) any other matter assigned to the Appeals Commission under an Act or by regulation under section 13.1(1)(d) of the Act.

Information note

Sections 46.3(3) and (4) of the Act read:

(3) Where a difference of medical opinion arises in the course of evaluating a claim for compensation under this Act and a medical panel has not been established to deal with the matter under subsection (2), the worker or a worker's dependant may apply to the Appeals Commission for the purpose of having a medical panel established to deal with the matter if the worker or the worker's dependant, as the case may be, has exhausted the worker's or dependant's rights to a review under section 46.

(4) The Appeals Commission shall request that a medical panel be established to deal with the matter referred to in the application if

- (a) the requirement under subsection (3) is met, and
- (b) in the Appeals Commission's opinion, there is a difference of medical opinion.

Section 13.1(2.2)(b) of the Act reads:

(2.2) Notwithstanding subsections (2) and (2.1), the chief appeals commissioner may authorize an appeals commissioner to sit alone

...

- (b) to hear and determine whether to grant interim relief while a matter is under appeal,

(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; and
- (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*. However, under the *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3 and the *Designation of Constitutional Decision Makers Regulation*, Alta Reg 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 participant in 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 of these rules, 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 of these rules 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 or rule being waived or varied. This rule allows that waiver or variance.

There are special rules for extending time limits for filing an appeal – see rule 2.3 [*Deadline for appeals to be received*] and rule 1.12 [*Chief appeals commissioner: general authority*].

Conflict between the rules, practice guidelines, Acts and regulations

1.6(1) 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.

(2) If a practice guideline made under rule 1.12(c) [*Chief appeals commissioner: general authority*] conflicts or is inconsistent with these rules, an Act or a regulation, these rules, the Act or the 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. Similarly, the Act, regulations and these rules prevail in the event of conflict with a practice guideline.

Division 2
Representatives

Right to be represented

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

(2) When a participant retains a representative for an appeal, a notice of representation in the prescribed form must be filed with the Appeals Commission subject to the conditions set out in the practice guidelines.

(3) The notice of representation must:

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

(4) If an individual who is a participant in an appeal dies in the course of appeal proceedings and the executor or personal representative of the deceased wishes to continue as the participant in the appeal, they may do so on evidence satisfactory to the Appeals Commission that the applicant is duly appointed and has appropriate authority.

Information note

The notice of representation should be filed at the earliest opportunity – see rule 2.1 [*Starting an appeal*]. 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 or from a Commission office.

Giving notice to a representative is notice to a participant or party

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

Representative ceasing to act

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

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; and
- (d) temporary appeals commissioners appointed in accordance with section 10(3) of the Act.

Appeals Commission: general authority

1.11(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 participant or party within a specified time;

- (c) correct an obvious slip, typographical error, error of calculation, misstatement or technical error or omission by a participant or party in any proceeding or document filed with or provided to the Appeals Commission, without first giving notice to the participant or 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 4.20 [*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 2.10 [*Participants in an appeal*] and rule 2.11 [*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 participant that may arise from the federal or provincial distribution of powers under the Constitution of Canada (see rule 3.4 [*Notice of constitutional question*]);
- (d) deciding an issue relating to the scheduling of a hearing (see rule 3.6 [*Scheduling the appeal hearing*]);
- (e) 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*]);
- (f) 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*];

- (g) deciding whether to dismiss an appeal for delay under rule 3.13 [*Dismissal of appeal for delay*];
- (h) directing that two or more matters be heard together at one hearing or directing that 2 or more matters be heard in separate hearings;
- (i) 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;
- (j) when an oral hearing is not necessary, directing that a documents-only hearing be conducted (see rule 1.13 [*Type of hearing*]);
- (k) requiring written submissions to be filed and set dates by which the submissions and any replies must be received (see rule 4.12(2) [*Argument and written submissions*]);
- (l) imposing terms and conditions and time limits on any order or direction;
- (m) directing a time, before the hearing, by which a participant must
 - (i) identify their witnesses;
 - (ii) describe the qualifications of or reasons for a witness and provide a summary of the evidence of the witness (see rule 3.2 [*Expert witnesses*]);
- (n) ruling on the admissibility and relevance of evidence;
- (o) 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.

See rule 3.8 [*Preliminary issues*] which provides for a means by which preliminary issues can be resolved before the hearing starts.

Chief appeals commissioner: general authority

1.12 In addition to any other powers of or granted to the chief appeals commissioner, the chief appeals commissioner may:

- (a) in accordance with sections 13.1(2) and 13.1(2.2) of the Act, authorize a panel of one 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;
- (b) in accordance with section 13.2(9) of the Act, extend the time limit if the chief appeals commissioner is satisfied there is a justifiable reason for the extension;
- (c) make practice guidelines to help parties, participants and prospective parties with an appeal, or any aspect of it, and to help explain the Act, regulations and these rules;
- (d) designate employees of the Appeals Commission as officers and delegate administrative powers, duties and responsibilities to those officers in accordance with section 12(2) of the Act;
- (e) prescribe forms for use under these rules.

Information note

Practice guidelines and the Delegation of Authority document can be obtained from the Appeals Commission offices or website:
www.appealscommission.ab.ca.

Type of hearing

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

- (a) an oral hearing (which may include the use of electronic technology to facilitate participation);
- (b) a documents-only process.

Communication with Appeals Commission

1.14(1) All communication with the Appeals Commission by a party, participant or prospective participant to an appeal must be through the appeals officer 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; or
- (b) submissions made in the course of a hearing conducted by the Appeals Commission.

PART 2: APPEALS TO THE APPEALS COMMISSION

Summary overview of this Part: This Part describes how to make an appeal to the Appeals Commission, what is done when an appeal is received, how other parties can respond to and become participants in an appeal and how a person who is not a party can become a participant in 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
- compensation
- employer
- file
- participant
- party
- prescribed form
- record
- representative
- review body
- worker

PART 2: APPEALS TO THE APPEALS COMMISSION

Division 1 How to Make an Appeal

Starting an appeal

2.1 To start an appeal, a person who has a right to appeal must file with the Appeals Commission a notice of appeal in the prescribed form within the time required by the Act or any extension of time permitted by the chief appeals commissioner.

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 website:

www.appealscommission.ab.ca

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

Notice of appeal

2.2(1) To be a valid appeal, the notice of appeal must contain all the information required by the prescribed form, and be signed by the appellant or the appellant's representative, and dated.

(2) Once a hearing date has been set, the Appeals Commission will not accept additional notices of appeal or new issues of appeal for the same hearing date.

Information note

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*]. Once a notice of representation is filed, all further communication from the Appeals Commission 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 of the decision in which the issue is decided, and
- 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 two years 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 filing the appeal is extended by the chief appeals commissioner under section 13.2(9).

A notice of appeal must be filed with the Appeals Commission within one year from the date of review body or Board decisions made before September 1, 2018.

(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 time limit.

Information note

The chief appeals commissioner will only grant an extension of time for filing an appeal if there are justifiable reasons for doing so (rule 1.12(b) [*Chief appeals commissioner: general authority*]).

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

Information note

Under rule 1.14 [*Communication with Appeals Commission*] all communications outside a hearing must be to the staff person assigned. If the staff person assigned is away, another staff person will be assigned to attend to the file.

Communication with representatives

2.4 Unless circumstances otherwise require, in the course of an appeal the Appeals Commission and the appeals officer assigned to an appeal must communicate only with the representative of the party, participant or prospective participant, unless no representative has been appointed.

Acknowledgment of valid appeal

2.5 If an appeal is valid, the Appeals Commission will acknowledge receipt.

Information note

See also rule 3.6 [*Scheduling the appeal hearing*].

Problems with the appeal

2.6(1) An appeal is invalid if the notice of appeal:

- (a) is incomplete because it does not contain or attach all the information required by the prescribed form;
- (b) is inaccurate or incorrect; or
- (c) is not received in time, or within an extension of time permitted by the chief appeals commissioner.

(2) If the appeal is invalid but can be corrected, the Appeals Commission must send the appellant written notice:

- (a) describing how to correct the appeal, or
- (b) 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 contains all the required information. The deadline and extensions of the deadline for receiving appeals are contained in rule 2.3 [*Deadline for appeals to be received*], section 13.2(8) and (9) of the Act and rule 1.12(b) [*Chief appeals commissioner: general authority*].

Withdrawal of an appeal

2.7(1) The appellant may apply to withdraw an appeal by filing a written request to withdraw the appeal with the Appeals Commission at any time before a decision is signed by the Appeals Commission.

(2) The Appeals Commission may:

- (a) accept the request to withdraw the appeal if all the participants agree or if no other participant 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 parties

2.8 When the Appeals Commission acknowledges receipt of an appeal as a valid appeal, it must send written notice of the appeal, a copy of the notice of appeal, and any notice of participation form to:

- (a) the Board; and
- (b) every person who the Appeals Commission considers to be a party based on a review of the record provided by the Board.

Time limit for response to an appeal

2.9(1) If a party who receives a notice of appeal under rule 2.8 [*Notice to parties*] wishes to participate in the appeal, they must:

- (a) complete a notice of participation form, and
- (b) file the notice with the Appeals Commission within 14 days of the date they receive the Appeals Commission notification of the appeal.

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

(3) A person who wishes to obtain party status but did not receive a notice of appeal under subrule (1), or a party who is presumed not to be a participant under subrule (2), may subsequently apply to be a party or participant, as the case may be under rule 2.11 [*Application to become a party to an appeal*].

Division 4 Parties to the Appeal and their Rights

Participants in an appeal

2.10 The participants in an appeal include:

- (a) the appellant under section 13.2(1) of the *Workers' Compensation Act*;
- (b) a party who has completed a Notice of Participation form; and
- (c) any other person recognized by the Appeals Commission as a party to the appeal following an application under rule 2.11 [*Application to become a party to the appeal*];
- (d) The Board, if it has expressed an intention to participate, with rights set out in section 13.2(6)(c) of the *Workers' Compensation Act*.

Information note

As required by section 13.2(6.1) and (6.2) of the Act, the Appeals Commission will notify participants prior to a hearing if the WCB will be participating and their reasons for doing so.

Application to become a party to an appeal

2.11(1) A person who claims to have a direct interest in an appeal or otherwise wishes to participate in the appeal must file with the Appeals Commission as soon as practicable an application for party status, as the case may be, with a description of their interest in being granted party status.

(2) The application for party status must:

- (a) be in writing, signed and dated;
- (b) include the applicant's full name, postal address and telephone number, including fax and cell phone numbers, if any;

- (c) state the reasons why the applicant wishes to be a party in the appeal; and
- (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 participant in an appeal

2.12(1) Subject to any limitations imposed under section 2.10 [*Participants in an appeal*], a participant in 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 participants in 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).

Pre-hearing information

2.13 Prior to the hearing, the Appeals Commission will send every participant a dated letter, or letters. The letters will include the following information, as necessary:

- (a) a confirmation of the hearing date, place and time,
- (b) the issues of appeal,
- (c) the participants,
- (d) the type of hearing,
- (e) whether an interpreter will be provided,
- (f) a prescribed form that the participants may use to submit any additional documents, and
- (g) any other material related to the appeal that the Appeals Commission considers appropriate.

Appeal Documents Package

2.14 The Appeals Commission will send a dated letter enclosing an Appeal Documents Package. The Appeal Documents package is composed of the documents it considers to be related to the appeal from the record received from the Board.

PART 3: GETTING READY FOR THE HEARING

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 applications to decide preliminary issues, obtaining notices to witnesses to attend proceedings or to produce documents, and sets out the rules for rescheduling hearings.

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
- file
- participant
- party
- prescribed form
- rules

PART 3: GETTING READY FOR THE HEARING

Division 1 Readiness for the Hearing

Disclosure and preliminary issues

3.1(1) Each participant must submit the following documents to the Appeals Commission in accordance with the timelines described in the Practice Guidelines:

- (a) copies of any additional documents that the participant intends to refer to at the hearing that are not contained in the appeal documents package, and
- (b) the names of all observers or witnesses who will be attending the hearing.

(2) If a participant does not file or incorrectly files any prescribed form or material, the non-compliance is not of itself a reason for adjourning the scheduled hearing date for the appeal.

Expert witnesses

3.2 If a participant intends to call an expert witness to give evidence at a hearing, the participant must, as soon as possible and at least 45 days before the scheduled hearing date or any longer time directed by the Appeals Commission, send to the Appeals Commission the qualifications of the witness, the reason for calling the witness, and a summary of the evidence of the witness.

Interpreters

3.3(1) The Appeals Commission may direct that an interpreter be present at a hearing whether or not an application 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 participant 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,
- (c) the Appeals Commission, and
- (d) every party.

(2) The written notice must identify the constitutional question and the argument that the participant intends to make.

(3) If the notice is not provided, the Appeals Commission will 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*], if the Appeals Commission is of the opinion that the court is the appropriate forum in which to decide the constitutional question, it may direct the participant to apply to the court to have the question determined.

(2) If the Appeals Commission directs a participant 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.

Division 3
Scheduling the Hearing and Deciding
Pre-hearing Issues and Applications

Scheduling the appeal hearing

3.6 The Appeals Commission must:

- (a) schedule a date, time and place for a hearing of the appeal when it is satisfied an appeal is valid, unless there is a reason not to schedule the hearing; and
- (b) send notice of the date, time and place of the appeal to the participants as soon as the hearing has been scheduled.

Pre-hearing conference

3.7(1) The Appeals Commission may require the participants 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) Matters which may be addressed at a pre-hearing conference include, but are not limited to, the following and the Appeals Commission may make an appropriate order or direction under rule 1.11 [*Appeals Commission: general authority*]:

- (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;
- (d) the issue of a notice to attend the hearing or a notice to produce documents, or both;
- (e) a consensual resolution process; and
- (f) an application for an order or direction under any other rule.

Preliminary issues

3.8(1) A participant may apply to the Appeals Commission to decide a preliminary issue relating to an appeal.

(2) The written request must be filed as soon as reasonably possible after the issue is identified.

(3) On receipt of a written request, the Appeals Commission must send:

- (a) notice of the date, time and place of the hearing to the application and every other participant, and
- (b) a copy of the written request to every participant other than the applicant.

Information note

This rule is intended to provide a means by which issues that are important but which can and should be dealt with before a hearing can be resolved so that the hearing itself can deal with the substantive issues in the appeal without delay.

Examples of preliminary issues which should typically be dealt with before a hearing are:

- (a) an application to issue a notice to attend or produce or for the questioning of a witness who will not be attending the hearing;
- (b) an application to have two or more matters heard together;
- (c) an application to be added as a party in the appeal.

Application to obtain evidence from a witness

3.9(1) In accordance with section 13.1(6) of the Act, a participant 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 its opinion:
- (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:
- (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.

(3) The participant requesting the notice to attend or notice to produce documents is responsible for the payment of conduct money, particulars of which are set out in Appeals Commission *Practice Guideline #2A: Notice to Attend or Notice to Produce Documents*.

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.

Application to re-schedule a hearing

3.11 If a participant wishes to reschedule a hearing, the party must apply to the Appeals Commission.

Recording the hearing

3.12 An Appeals Commission hearing will be recorded.

Information note

In order to obtain a transcript of recorded proceedings a participant must complete the *Request for Transcript* form. Participants are responsible for the costs of preparing the transcript.

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 not been scheduled, or has been delayed, or a scheduled hearing date has been cancelled and a hearing date is not rescheduled, and 6 months have 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 and participants of its intention and may request oral or written submissions, or both, from the parties and participants.

(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, or
- (d) dismiss the appeal for delay in proceeding.

PART 4: THE HEARING AND DECISION

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
- participant
- party
- record
- review body
- rules

PART 4: THE HEARING AND DECISION

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 it considers appropriate.

Respectful proceedings

4.3(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 its 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

4.4(1) Other than participants 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 participant to give evidence before any other witnesses are called to give evidence on behalf of a participant.

(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 has finished giving their evidence.

Non-attendance at in-person hearing

4.5(1) If a participant does not attend a scheduled hearing, the Appeals Commission may make any direction the panel considers appropriate, including:

- (a) hear the matter in the absence of the participant, if the participant has a representative and the representative has the participant's authorization to proceed with the hearing in the participant's absence;
- (b) decide to hear the matter on the basis of the documents before it, and the representations of the participant or participants attending the hearing; or
- (c) adjourn the matter to a later date, subject to any conditions it may impose.

(2) A participant who has been given notice of a hearing, including the Board, 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

4.6(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 or participant 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, it may decide not to admit evidence that it considers to be repetitious, serves no purpose, or is not relevant.

Form of evidence

4.7(1) 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,
or
- (d) any other manner it considers appropriate.

Questioning by Appeals Commission

4.8 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

4.9 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

4.10 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

4.11 During a hearing the Appeals Commission may adjourn at any time, 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

4.12(1) After the participants have had an opportunity to present evidence, the Appeals Commission must give every participant at the hearing an opportunity to make a final argument.

(2) The Appeals Commission may require the participants 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 participant 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

4.13(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.

(3) The decision of the Appeals Commission is that of the majority of the appeals commissioners on a panel.

Information note

Section 6 of the Act reads:

Duties of board of directors

6 The board of directors

- (a) shall
 - (i) determine the Board's compensation policy,
 - (ii) review and approve the programs and operating policies of the Board, and
 - (iii) consider and approve annual operating and capital budgets of the Board,

and

- (b) may enact bylaws and pass resolutions for the conduct of the business and affairs of the Board.

Section 13.1(2.1) of the Act reads:

(2.1) A decision of a majority of the members of the Appeals Commission present and constituting quorum is the decision of the Commission.

Section 13.2(6) and (6.3) of the Act reads:

(6) In the hearing of an appeal under this section, the Appeals Commission

- (a) shall give all persons with a direct interest in the matter under appeal an opportunity to be heard and to present any new or additional evidence,
- (b) is bound by the board of directors' policy relating to the matter under appeal,
- (c) shall, subject to subsection (6.1), permit the Board to make representations, in the form and manner that the Appeals Commission directs, as to the proper application of policy determined by the board of directors or of the provisions of this Act or the regulations that are applicable to the matter under appeal,
- (d) may confirm, reverse or vary the decision or determination appealed,
- (e) may direct that its decision be implemented within a specified time period, and
- (f) may refer any matter back to the review body or the Board, as the case may be, for further action or decision, with or without directions.

(6.3) The Appeals Commission shall determine all matters and questions arising under this Act and the regulations in respect of it having regard to the substance of the matters in dispute and the merit of the positions of the parties, in a manner consistent with the provisions of this Act, the regulations and workers' compensation principles.

What controls Appeals Commission decisions?

4.14 When the Appeals Commission makes a decision it must follow:

- (a) the *Workers' Compensation Act*;
- (b) the *Workers' Compensation Regulation*, Alta Reg 325/2002;
- (c) when it is applicable, the *Firefighters' Primary Site Cancer Regulation*, Alta Reg 102/2003;
- (d) when it is applicable, the *Medical Panels Regulation*, Alta Reg 21/2018; and
- (e) any other Act or regulation that applies to the matter to be decided.

New or additional information

4.15 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 participant to review the information and make submissions on it and its relevance;
- (c) consider re-opening the hearing to hear evidence related to the information; and
- (d) consider giving notice to the Board and other participants 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?

4.16 Under section 13.2(6) of the Act, the Appeals Commission may:

- (a) confirm, reverse, or vary a decision under appeal; or

- (b) refer any matter back to the review body or Board that made the decision for further action or decision, with or without directions.

Signing the decision

4.17 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

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

Notification and distribution of decision

4.19(1) The Appeals Commission must send each decision it makes on an appeal to

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

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

Technical errors and omissions

4.20(1) Subject to rule 4.21 [*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 or 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 and participants but the parties must subsequently be notified of the correction.

Clarification

4.21 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.

PART 5: RECONSIDERATION OF DECISIONS

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
- participant
- party

PART 5: RECONSIDERATION OF DECISIONS

Application for reconsideration

5.1(1) In accordance with section 13.1(7) of the Act, on application by a party 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 be made on the prescribed form and meet the time limitations of rule 5.2 [*Conditions on reconsideration applications*].

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

(4) Applications for reconsideration are subject to the *Appeal Rules* in place at the time the application for reconsideration is received by the Appeals Commission.

Conditions on reconsideration applications

5.2(1) A party 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. Reconsideration on the basis of new evidence is only permitted once per instance of new evidence.

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

- (a) In the case of an application based on a significant defect in the appeal process or in the content of the decision described in rule 5.6(2) [*Criteria for reconsideration*], within 6 months of the date of the decision that is the subject of the application.
- (b) In the case of an application based on new or unavailable evidence described in rule 5.6(3) [*Criteria for reconsideration*], within 6 months of the date the evidence was discovered or became available.

(3) The time limits for reconsideration applications set out in Rule 5.2(2) may not be extended and are not subject to waiver pursuant to rule 1.5 [*Waiver of and non-compliance with the rules*].

(4) Decisions of a reconsideration preliminary review or threshold panel (as defined in Rule 5.3 [Reconsideration process]) will not be reconsidered.

(5) Decisions made under section 13.2(9) of the Act by the chief appeals commissioner or the chief appeals commissioner's delegate on extending the time limit to appeal will not be reconsidered.

Reconsideration process

5.3 An application for reconsideration under rule 5.1(1) [*Application for reconsideration*] by a party involves three steps:

- (a) first, the application is referred to one or more appeals commissioner(s) for a preliminary review to determine whether the preliminary reconsideration requirements are met;
- (b) second, if the preliminary requirements are met, the application must be referred to a panel of the Appeals Commission called the reconsideration threshold panel to determine whether the threshold requirements are met;
- (c) third, if the threshold requirements are met, the Appeals Commission must schedule a hearing on the merits of the appeal and the hearing is to be conducted afresh, as if no previous hearing had been held or decision made.

Criteria for preliminary review

5.4(1) The Appeals Commission first determines whether the application was made in time and whether the application contains all information required by the prescribed form.

(2) The appeals commissioner(s) conducting the preliminary review must then review the application and decide whether the application contains an arguable case for reconsideration.

Submissions for reconsideration threshold review

5.5 Before the reconsideration threshold panel considers an application every party, including the Board, must be given an opportunity to make in-person representations on whether the threshold for reconsideration of an Appeals Commission decision has been met.

Criteria for reconsideration

5.6(1) Where an application for reconsideration is found to be an arguable case following preliminary review, the application proceeds to the threshold step. The threshold panel will determine whether the threshold requirements for reconsideration under subrule (2) are met or subrule (3) applies.

(2) To meet the threshold for reconsideration, a decision must show a significant defect in the appeal process or in the content of the decision which is likely to change the result of the original decision.

(3) A decision may also be reconsidered if the threshold 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

5.7 The Appeals Commission may confirm, rescind or amend any decision, direction or order previously made by it.

Information note

Section 13.1(7), (7.1), (7.2) and (7.3) 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.

(7.1) Before deciding to hold a hearing to reconsider a matter under subsection (7), on receiving an application, the Appeals Commission shall review the information provided in support of the application under subsection (7) to determine whether there is an arguable case for reconsideration.

(7.2) Where the Appeals Commission determines that there is an arguable case for reconsideration, the Appeals Commission shall hold a hearing to consider the merits of the application for reconsideration.

(7.3) If the Appeals Commission determines that there is merit to the application for reconsideration, the Appeals Commission shall hold a hearing to reconsider the matter.

PART 6: TECHNICAL RULES

Summary overview of this Part: This Part describes how documents are to be filed with the Appeals Commission and 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.

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
- participant
- party
- rules

PART 6: TECHNICAL RULES

Filing documents with the Appeals Commission

6.1(1) A document is filed under these rules when it is received by the Appeals Commission.

(2) A document may be received in an office of 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) In addition to the filing methods set out in Rule 6.1(2), prescribed forms of the Appeals Commission may also be filed through the Appeals Commission's website.

(4) A person who files a document with the Appeals Commission must:

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

(5) A document will be considered received by the Appeals Commission on the date and time attached to it by:

- (a) the Appeals Commission in the case of ordinary, registered and double registered mail;
- (b) the fax machine, in the case of documents delivered by fax;
- (c) the Appeals Commission in the case of delivery of a document personally, or by courier or messenger; and
- (d) The Appeals Commission's e-mail server in the case of documents delivered online through the Appeals Commission's website.

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 or given by the Appeals Commission or by a party or participant 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 or gives a document to a party or participant must state the sender's name, address and telephone number, and the name of the claim or account number to which the document relates.

(3) If sending or giving 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 or given to a person is properly sent or given is 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.

Change of address

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

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

Signature

6.6 A signature required by these rules and prescribed forms under these rules includes an electronic signature.

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.

Retention and disposition of appeal records

6.8 The Appeals Commission retains all records received and created for an appeal for a period of 10 years from the date of the last Appeals Commission decision related to that appeal. After the 10-year period has expired, all records related to an appeal are destroyed.

Repeal of former rules

6.9 The Appeal Rules of the Appeals Commission effective September 1, 2018, are repealed.

Coming into force

6.10 These Appeal Rules come into force on June 1, 2020.

APPENDIX: DEFINITIONS

APPENDIX
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) or 13.1(2.2) 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.

(2.2) Notwithstanding subsections (2) and (2.1), the chief appeals commissioner may authorize an appeals commissioner to sit alone

- (a) to hear and determine matters and questions relating to assessments referred to in section 97
- (b) to hear and determine whether to grant interim relief while a matter is under appeal, and
- (c) to carry out a review referred to in subsection (7.1).

(2.3) When an appeals commissioner sits alone under subsection (2.2), the appeals commissioner is deemed to be the Appeals Commission for the purposes of this Act.

appeals officer means an employee of the Appeals Commission designated by the chief appeals commissioner as an officer;

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;

participant means a party who has expressed an intention to participate in an appeal;

party means a person with a direct interest in an appeal, or any other person who has applied for and obtained party status;

practice guideline means a practice guideline issued by the chief appeals commissioner under rule 1.12 [*Chief appeals commissioner: general authority*];

prescribed form means a form prescribed for use under these rules by the chief appeals commissioner under rule 1.12 [*Chief appeals commissioner: general authority*] 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 or participant;

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

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 these Rules have the same meaning as in the Act unless the word is otherwise defined in rule 1 of this Appendix.