

ONTARIO REGIONAL OFFICE

80 Commerce Valley Drive East, Markham, ON L3T 0B2
Tel.: (905) 739-3999 Fax: (905) 739-4001 / cupe.ca / scfp.ca

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via Email: Natasha Luckhardt nluckhardt@ofl.ca
WSIB appealsfeedback@wsib.on.ca

We are CUPE (Canadian Union of Public Employees). The largest trade union in Canada. We have approximately 715,000 members across the country with over 280,000 in Ontario. We have dedicated staff focused on workers compensation, representing our members through the appeals process at WSIB and WSIAT. This is our response to the KPMG Value for Money Audit (VFMA) and the recommendations contained therein.

Recommendation 1.1: We should establish expertise in alternative dispute resolution within front-line decision-makers and the Appeals Services Division to provide early resolution and reduce the volume of cases going to appeals.

When establishing an internal Alternative Dispute Resolution (ADR) process, the Workplace Safety and Insurance Board (WSIB) should consider several key principles to guide their approach. To help ensure a fair and effective system, the ADR model should consider:

1. **Accessibility:** This process should be accessible to all parties involved. The WSIB must make clear the nature of the process, what are the eligibility criteria, and how parties can participate. The WSIB must place measures that ensure individuals with disabilities or language barriers can fully participate.
2. **Impartiality and Neutrality:** We have concern over mediators' ability to be impartial and neutral during this process since they are WSIB employees. Mediators must have sufficient training and expertise to act as unbiased and neutral actors, provide a forum for parties to present their case, and ensure that the resolution is fair and objective.
3. **Voluntary Participation:** Participation in the ADR process must be voluntary for the injured worker and they should retain the right to a hearing should they wish to have a hearing at any point during the ADR process.
4. **Procedural Fairness:** The ADR process should adhere to principles of procedural fairness, This includes providing parties with adequate notice, an opportunity to present their case, and the right to be heard. It also involves ensuring that parties have access to relevant information and an opportunity to respond to any evidence presented. The injured worker should have the same rights and opportunities as they would if they went to hearing.
5. **Compliance with WSIA and any other Applicable Laws and Regulations:** The ADR process should operate within the framework of relevant laws and regulations. It should not undermine or bypass legal requirements or deny parties their rights under the law.

MARK HANCOCK

National President/Président national

CANDACE RENNICK

National Secretary-Treasurer/Secrétaire-trésorière nationale

PATRICK GLOUTNEY, FRED HAHN, JUDY HENLEY, SHERRY HILLIER, LEE-ANN KALEN

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These principles can provide a solid foundation for the WSIB to establish an internal ADR process that promotes fairness, efficiency, and positive outcomes.

In terms of timelines or time limits for participation in ADR, our recommendation is that there should not be time limits to access this process. Like other tribunal settings in Ontario, the ADR process should be available to parties any time up until the hearing date. If the intent is efficiency, any barrier that limits when an ADR option is available (such as time limits) why would a lime frame be placed on participation which would only limit the ability to participate.

Recommendation 1.1: Our alternative dispute resolution and appeals processes should only start once the workplace party has clearly documented the reasons related to the decision they are objecting to, why it should be changed, and the proposed remedy.

This recommendation is patently unreasonable and unfair. It interferes with the injured workers right to access to justice. Requiring an injured worker to clearly document all the reasons for their appeal and the desired remedy in writing before being allowed to proceed with their appeal is unfair for several reasons:

1. Information and Resource Disparity: Injured workers may not have access to the necessary legal knowledge or resources to effectively articulate their appeal in writing, nor would they be aware of the possible remedies available and suitable to their circumstances. This requirement places an additional burden on workers, especially those who may not have the means to seek legal assistance or lack familiarity with the appeals process.
2. Communication Barriers: Some injured workers may face challenges in expressing themselves in writing due to language barriers, literacy issues, or disabilities. Requiring written documentation could impede their ability to effectively communicate their concerns and needs, potentially leading to misunderstandings or a failure to adequately present their case.
3. Procedural Complexity: The appeals process can be complex and intimidating for injured workers who are already dealing with the physical, emotional, and financial impact of their injuries. Requiring detailed written documentation of all reasons and remedies at the initial stage may place an unfair burden on workers who are still gathering evidence or exploring the full extent of their injuries and the associated consequences.
4. Limited Time and Resources: Injured workers may face time constraints due to the appeals process's strict deadlines. Requiring comprehensive written documentation upfront will not allow sufficient time for workers to gather all relevant information and build a robust case. This time pressure can undermine their ability to present a thorough and compelling appeal.
5. Power Imbalance: Injured workers often face a power imbalance when dealing with their employers and WSIB. Requiring extensive written documentation may further exacerbate this power imbalance by placing a heavier burden on workers compared to employers or insurance companies.

It is important to ensure that the appeals process is accessible, transparent, and equitable. This recommendation by KPMG and endorsed by WSIB, puts excess stress and work on the injured worker unnecessarily which could cause them to abandon their appeal out of frustration. Whether or not it is the intent of this recommendation, implementing this change will serve to repress claims and deny injured workers their rightful entitlements.

Another negative consequence of this recommendation is the amount of extra time it will take worker representatives to prepare for the case, essentially doing the work twice, which will add further representation costs for the injured worker.

Recommendation 1.1: We should adopt set timeframes for the reconsideration process

A 30-day time limit for appeals is unfair and puts the injured worker at a disadvantage. Some concerns are:

1. **Accessibility and Procedural Barriers:** A short time limit, such as 30 days, can create accessibility barriers for individuals who may require additional time to gather relevant information, access medical, find and consult legal representation, or understand the complex appeal process. It does not provide sufficient time for individuals who have limited resources or face language barriers to navigate the process effectively.
2. **Lack of Adequate Notice:** Individuals may not receive timely notice or may not be aware of their rights and the deadline for filing an appeal. Individuals do not receive a negative decision on the date it is issued, meaning that they have even fewer days to object. This lack of notice can prevent individuals from exercising their right to appeal within the given time limit and impacts their right to access to justice.
3. **Impact on Vulnerable Individuals:** A rigid time limit disproportionately affects vulnerable individuals, such as those with disabilities or individuals dealing with physical or mental health issues. These individuals may face challenges in understanding and complying with the time limit due to their circumstances, most of which are focusing on healing from a workplace injury or returning to work.
4. **Administrative Errors:** In some cases, administrative errors or delays within the WSIB system may result in individuals receiving late or inaccurate information about their right to appeal. Injured workers should not be penalized due to errors or delays outside of their control.
5. **Access to Justice:** A short time limit can restrict access to justice by limiting individuals' ability to exercise their right to appeal and present their case effectively. It may undermine the principles of fairness and due process by imposing strict restrictions that hinder an individual's ability to seek a fair resolution. It serves to repress claims through procedural rules, rather than assure the correct decision is made on the substantive issues.
6. **Medical:** Accessing the necessary medical documentation to show that the criteria needed for many claims means injured workers often need to see specialists or other health care professionals and require certain diagnoses to be eligible for benefits. A worker will not know whether to object and the reasons for objecting until these specialists and health care professionals are seen. Accessing these appointments takes Significantly more time than 30 days.

Recommendation 1.2: We should implement a one-year time limit after the initial decision date for appeal readiness forms to be submitted. Both parties should be required to include their proposed resolution on the appeal readiness form, which will help define the resolution method, the scope of the dispute and the necessary expertise and documentation required.

This recommendation is counter intuitive and serves to prejudice the rights of injured workers. Once an Intent to Object form has been submitted on time, there is no need for additional time limits, especially ones that would retract the workers right to continue with their appeal. This is a further procedural barrier that undermines injured workers rights to natural justice.

It is our position that this recommendation be abandoned. In the alternative, WSIB could consider placing the file in “inactive” status after a period of 3 years. When the worker is prepared to continue on with their appeal, they can reactivate it by submitting the appeal readiness form.

There is no reason to have more details on the forms such as proposed resolutions. All decision makers should be trained and educated on the resolutions available to injured workers and capable of dealing with this through the appeal process.

Recommendation 2.3: We should establish criteria for determining in-person or online hearings by considering factors like geographical location, suitability and appropriateness of technology, and accessibility.

Having the option for injured workers to have an oral hearing (in person or virtually) versus a hearing in writing is important for several reasons:

1. **Direct Communication:** An oral hearing allows injured workers to directly communicate their symptoms, experiences, and perspectives to decision-makers. It provides an opportunity for workers to express themselves in their own words, conveying the emotional and personal impact of their injuries more effectively than written documentation alone.
2. **Clarification and Follow-up Questions:** During an oral hearing, decision-makers have the opportunity to ask clarifying questions and seek further information from the injured worker. This helps ensure a comprehensive understanding of the worker's situation, the nature of their injuries, and the impact on their life and work. It enables decision-makers to make a more informed and fair judgment.
3. **Procedural Fairness:** Oral hearings contribute to the principle of procedural fairness by providing an open and transparent forum for all parties involved. Injured workers have the chance to present their case, respond to questions or concerns raised by the decision-maker, and address any misunderstandings or discrepancies. This helps ensure that decisions are based on a complete and accurate understanding of the worker's circumstances.
4. **Equalizing Power Imbalances:** Injured workers often face power imbalances when dealing with employers, insurance companies, or government agencies. Oral hearings can help level the playing field by giving workers a voice. It empowers workers to actively participate in the decision-making process and helps ensure a fairer and more balanced resolution.
5. **Written Submissions Require Expertise:** While seasoned representatives can articulate the issues and the relevant policies that impact a claim, unrepresented workers may not have the experience or skill set to identify and articulate the issues and terminology that effective written submissions require. An oral hearing places less emphasis on the “special language” of workers compensation law and focuses on the experiences of workers. Denying unrepresented workers access to an oral hearing exacerbates the power imbalances noted before, privileging well-resourced employers and their expert representatives.
6. **Human Connection and Empathy:** Oral hearings provide a human connection between decision-makers and injured workers. This personal interaction can foster empathy and understanding, enabling decision-makers to better appreciate the challenges and hardships faced by the worker. It humanizes the process and can contribute to more compassionate and just outcomes.
7. **Building Trust and Confidence:** Allowing injured workers to have an oral hearing demonstrates respect for their rights and promotes trust in the WSIB. It shows that their voices matter and that their concerns will be heard and considered. This, in turn, enhances confidence in the fairness and integrity of the decision-making process.

While oral hearings may not be necessary or appropriate in every case, providing the option can significantly enhance the fairness, transparency, and effectiveness of the appeals process for injured workers. It ensures that their experiences and perspectives are fully taken into account, leading to more just and informed decisions.

Oral hearings can be in person or virtually. Each have their own set of pros and cons. Here are some key points to consider for both formats:

In-Person Hearings:

Pros

- **Face-to-Face Interaction:** In-person hearings allow for direct, face-to-face interaction between all parties involved. This can contribute to a more personal and engaging experience, fostering better communication and understanding.
- **Non-Verbal Cues:** Being physically present enables participants to observe non-verbal cues such as body language and facial expressions, which can provide additional context and help in assessing credibility or emotions.

Cons:

- **Travel and Logistics:** In-person hearings may require travel, potentially leading to additional time and cost burdens for participants. This can be especially challenging for individuals who are geographically distant or have limited mobility.
- **Scheduling Constraints:** Coordinating schedules and finding mutually convenient dates and locations for all parties involved can be a logistical challenge, potentially causing delays in the resolution process.

Online/Virtual Hearings:

Pros:

- **Accessibility and Convenience:** Virtual hearings eliminate the need for travel, making them more accessible and convenient for participants, particularly those who may face geographical or mobility limitations.
- **Cost Savings:** Virtual hearings can reduce costs associated with travel, accommodations, and venue rentals, making the process more cost-effective for all parties involved.
- **Flexibility:** Online hearings provide greater flexibility in scheduling, as participants can join from any location with an internet connection. This can help expedite the resolution process by minimizing scheduling conflicts.

Cons:

- **Technical Challenges:** Virtual hearings depend on stable internet connections and reliable technology platforms. Technical issues or connectivity problems can disrupt proceedings and impede effective communication.
- **Document Sharing and Examination:** While digital documents can be shared during virtual hearings, the ability to examine physical evidence or documents may be limited.

It is important to note that the suitability of in-person or virtual hearings may vary depending on the nature of the case, the preferences of the participants, and the availability of appropriate technology and resources. Hybrid models, combining elements of both formats, can also be considered to maximize the advantages of each. Ultimately, the goal is to ensure a fair and effective hearing process that allows for meaningful participation and equitable outcomes.

Recommendation 3.1: We should make sure that return-to-work decisions with a 30-calendar-day time limit are prioritized and expedited through the appeals process.

We disagree with this recommendation and do not believe this should be a factor for prioritizing and expediting decisions. It undermines efficiency in the appeal process requiring a separate hearing for the return-to-work issues and any other appeals. A decision maker would essentially hear the same or overlapping evidence twice. It would also require the injured worker and/or representative to have to prepare for multiple hearings on the same claim.

This recommendation should be abandoned.

Recommendation 3.2: We should reinforce the 30-calendar-day time limit for appeal implementation and ensure this is measured across the organization.

Implementation decisions are often complex and difficult to interpret. To confirm accuracy of loss of earnings payouts, for example, workers will have to find old pay stubs or schedules to make sure that the loss times provided by an employer are accurate. There is no legitimate reason to shorten the time a worker has to confirm the findings of an implementation decision and object to a decision. While finality is important, it is not as important as accuracy. For this reason, we continue to insist that the normal 6 month time limit apply to all implementation decisions.

Recommendation 4.2: We should exclude decisions based on standardized calculations from our internal appeals process and these decisions should be appealed directly to the WSIAT.

WSIB does not have the legislative authority to exclude certain kinds of decisions from its appeals process. This recommendation appears to be passing the buck to the Tribunal to handle appeals that the WSIB may be able to resolve through its own appeals process. It serves to delay decision making and clog up the Tribunal's own appeal processes. It is an inappropriate and unnecessary recommendation and we ask that the Board reject it.

In solidarity,

WSIB Specialists

CC: N. Sheppard
A. Kerner:

jb/COPE491