

Practice & Procedure Decision of the Appeal Division

Number: No. 29
Date: December 20, 1999
Panel: Herb Morton, Acting Chief Appeal Commissioner
Subject: Appeal Practice & Procedure - Public Access to Appeal Division Decisions — Writing Decisions Without Reference to Identifiers

Section 85.1 of the *Workers Compensation Act* (the *Act*) provides that the chief appeal commissioner may determine the practice and procedure for the conduct of appeals by the Appeal Division. This authority is subject to any policies of the governors and any bylaws enacted or resolutions passed under section 82.

On November 19, 1999, the panel of administrators resolved, in part:

- (1) Appeal Division decisions under the *Act*, and under *the Criminal Injury Compensation Act*, generally be written without reference to identifiers effective no later than January 1, 2000.
- (2) Appeal Division decisions under Part 3 of the *Act* (as amended October 1, 1999 by Bill 14, the *Workers Compensation (Occupational Health and Safety) Amendment Act*), generally be written without reference to identifiers effective from the date of this resolution.
- (3) Past and future decisions of the Appeal Division under section 11 of the *Act* filed in British Columbia court registries be made publicly available without removal of identifying information.
- (4) In unusual circumstances where writing a decision without reference to identifiers is not practicable, the Appeal Division may include identifiers in the decision but must then prepare an edited version of the decision so as to permit public access to the decision while ensuring compliance with the confidentiality and privacy provisions of the *Act* and the *Freedom of Information and Protection of Privacy Act*.
- (5) The Appeal Division establish an Internet website, with a search engine, which will permit public access to Appeal Division decisions without identifiers, and to unedited section 11 decisions which have been filed in British Columbia court registries.

This decision provides general guidelines for the writing of Appeal Division decisions without reference to identifiers, to ensure compliance with the confidentiality and privacy provisions of the *Act* and the *Freedom of Information and Protection of Privacy Act*.

Information which in and of itself would not need to be protected (such as geographic locations) will be protected to the extent necessary to safeguard confidentiality and privacy. Where there is doubt as to whether particular data would tend to identify a party and as to whether a descriptive term or coded initial should be used, the doubt should generally be resolved in a fashion which better protects confidentiality and privacy. It is anticipated that appeal commissioners will approach situations not covered by these guidelines by writing in a manner that will allow the decision to be accessible to the general public, without compromising confidentiality and privacy.

(a) **Names**

No names will be used in Appeal Division decisions, unless the name is taken from a public source (such as a published medical article or textbook, a court judgment, or *Hansard*). This means that the names of workers, employers (whether an individual or a company), and witnesses (lay or expert) will not be used in the decision.

The highest level of protection of privacy is to be afforded to parties and lay witnesses. They may be identified by role (the worker, employer, manager, etc.) or by a coded initial which does not correspond to their name. (Mr. Smith would be Mr. A rather than Mr. S).

A lower level of protection will be provided for expert witnesses, such as doctors. They may be referred to by title (e.g. the worker's attending physician) or by an actual initial. This applies to treating physicians in the community, and to physicians employed by the board. A coded initial may be used for expert witnesses at the discretion of the panel where the panel considers that utilizing the actual initial might serve to identify a party or lay witness.

Names of treating facilities will be dealt with in a similar fashion — they may be referred to by title (e.g. a local hospital or physiotherapy clinic) or by an actual initial. A coded initial may be used where the name of the facility might serve to identify a party or lay witness.

Other decision makers will normally be referred to by title (e.g. claims adjudicator, Review Board vice chair, assessment officer, variance and

sanction review officer, etc.). An actual initial may be used where the panel considers this necessary.

(b) **File Copy of Decision and Cover Letter to Parties**

The file copy of a decision will include a “header” at the top of each page with identifying information (name and claim or account number) to ensure the accuracy and integrity of file records. The parties to the appeal or other matter will be provided with a copy of the decision with the identifying “header”, by cover letter addressed to the parties. If coded initials are used (e.g. witnesses A, B and C), the cover letter will normally provide the identity associated with each coded initial (but not those for which an actual initial was used as the meaning will be self-evident to the parties). The cover letter will also explain that names have not been used in the body of the decision, in order to protect the privacy of the parties. The “header” and “cover letter” will be provided to the parties and retained on the board’s file, but will not be publicly accessible.

The “header” and “cover letter” will be removed from the Appeal Division decision before it is made publicly accessible. The decision placed on the internet will retain the Appeal Division decision number for reference (e.g. #00-xxxx). The paragraphs in the Appeal Division decision will be numbered for ease of reference to particular passages in the decision.

(c) **Names of representatives**

Names of representatives will not be used. They will be referred to by their role (e.g. the worker’s union representative, the worker’s lawyer, counsel for the employer, etc.). Alternatively, a representative may be referred to by their actual initial.

(d) **Claim numbers and account numbers**

WCB file numbers (worker’s claim file number, employer’s account number, sanction report number, etc.) will not be included in the body of a decision.

(e) **Payroll, revenue data , and salary information**

Employers' payroll and revenue data will be protected in decisions. In some cases, protecting the identity of the employer will be sufficient as the payroll or revenue data would not be identifiable by itself. Where the reasons and analysis in the Appeal Division decision might tend to identify the employer, it may be necessary to refer to the payroll or revenue data in general or approximate terms.

If the decision cannot be written in a meaningful fashion without providing specific figures in the body of the decision, it may be necessary to use a second level of editing as contemplated by paragraph 4 of the panel of administrators' resolution (see paragraph g below).

Similarly, in addressing issues concerning a worker's employability, care must be taken to avoid disclosing the salaries paid by particular identifiable employers. This might arise, for example, in connection with a worker's job search efforts and contacts with various employers.

(f) **Geographic locations**

Geographic locations will not be used where this might lead to the identification of a party or lay witness. If geographic location is a relevant matter, it is preferable to use a general description (e.g. a northern community) rather than identifying the specific town or community.

As noted above, names of treating facilities (such as a local physiotherapy clinic or hospital) must similarly be protected as naming the facility would have the same effect as identifying the community.

(g) **Second level of editing in exceptional circumstances**

In limited and exceptional circumstances, it may be appropriate for an Appeal Division panel to issue a decision to the parties which is further edited for privacy considerations before the decision is made accessible to the public. It is anticipated this will occur rarely, such as in cases where the ability of parties to understand the facts, evidence or reasoning will be made unduly difficult by complying with the above guidelines. In this event, it will be the responsibility of the Appeal Division panel issuing the decision to provide the two versions of the decision.

(h) **Citing Prior Decisions**

Sometimes appeal commissioners will refer readers to the background or evidence set out in the decisions being appealed, rather than repeating that evidence in full in the Appeal Division decision. For example, the Appeal Division panel may state in its decision that the background to the appeal was well summarized in the Review Board finding and need not be repeated. This practice facilitates a “streamlined” decision-writing process and may continue. The fact that Appeal Division decisions will be made publicly accessible does not mean the decisions must necessarily be written for the broader audience. The appellant and other parties to the appeal will remain the primary focus for the decision, while recognizing the broader public interest. The panel will determine the extent to which it is necessary to set out the background and evidence necessary to address the issues raised by the parties and to set out the basis for the panel’s decision, consistent with the *Hallmarks of Quality Decisions* (15 W.C.R. 111).

(i) **Quotations**

Quotations contained in Appeal Division decisions must, for obvious reasons, also be edited to protect privacy. This will normally be accomplished by substituting a descriptive term for a name, and using square brackets to show the change. E.g. [the worker].

Conclusion

The move to place Appeal Division decisions into the public domain represents a very significant change in approach for the workers’ compensation system. In preparing these guidelines, I have taken into account the general practices followed in editing decisions for publication in the Workers' Compensation Reporter. That past practice stands as a guide as to the level of confidentiality and privacy parties would reasonably expect to be preserved. I consider that the Appeal Division should maintain a similar level of protection for confidentiality and privacy, in placing decisions on the internet. To the extent there is some variation in the practices followed in the Reporter, and to promote consistency in the general approach to be followed in the Appeal Division for such matters, these guidelines have been developed for use by appeal commissioners in drafting decisions without identifiers.

A review of these guidelines after a period of time, with the benefit of input from the community and appeal commissioners concerning the operation of the guidelines in practice, may well be appropriate.