

Workers' Compensation Independent Review Board

CLIENT SERVICE MANUAL



March 2025

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1.00 The Workers' Compensation Independent Review Board

1.10 Introduction

The workers' compensation system in Newfoundland and Labrador has two levels of review where applicants may request a review of decisions of WorkplaceNL. The first level of review is the Internal Review process within WorkplaceNL. The second level of review is the external review process of the Workers' Compensation Independent Review Board (WCIRB or the Review Board).

The Review Board is a quasi-judicial entity independent of WorkplaceNL and reports to the Minister responsible for WorkplaceNL. The Review Board is responsible for the review of WorkplaceNL's final decisions to ensure they comply with the **Workplace Health, Safety and Compensation Act (WHSCA)** and Regulations, as well as the policies of WorkplaceNL. If a WorkplaceNL decision is found to be in error, the Review Board may direct an appropriate remedy where necessary.

This Client Service Manual (the Manual) is intended as a reference guide to enhance all parties' understanding of the Review Board's processes and procedures. The Review Board is providing this Manual for information purposes. It is not intended to provide legal advice. If there is an inconsistency between the **WHSCA**, Regulations and this Manual, the **WHSCA** and Regulations will take precedence.

This Manual sets out the practices review participants should follow to ensure an efficient and fair review process for all parties. The Review Board recognizes there may be particular instances where it may be necessary to deviate from these practices due to the evolving nature of the review process. Therefore, the Review Board reserves the right to modify or waive certain practices in exceptional circumstances, while ensuring fairness to all parties involved in the review process.

This Manual is available through the Review Board's website at www.gov.nl.ca/wcirb and in hard copy upon request.

In order to provide additional information, relevant sections of legislation are noted at the end of each topic in the Manual where applicable as presented below:

Reference:
WHSCA, Part III External Reviews, S.31-44
WCIRB Regulations, S.1-15

1.20 Jurisdiction

Section 37 of the **WHSCA** provides the jurisdiction for the Review Board to review WorkplaceNL's decisions in relation to:

- compensation benefits;
- rehabilitation and return to work services and benefits;
- an employer's assessment;
- the assignment of an employer to a particular class or group;
- an employer's merit or demerit rating; and
- the obligations of an employer and a worker under part VI of the **WHSCA**.

The review process is not considered to be an appeal process whereby a workers' compensation case is heard in its entirety. Review Commissioners are authorized to review final decisions of WorkplaceNL and to confirm whether a particular decision is consistent with the **WHSCA**, Regulations and WorkplaceNL policies. If a Review Commissioner finds WorkplaceNL's decision was not consistent, they must:

- identify how the decision of WorkplaceNL was contrary to the **WHSCA**, Regulations and policies;
- specify the contravened provision;
- set aside the decision, and either:
 - a) make a new decision, or
 - b) refer the matter back to WorkplaceNL with direction on the appropriate remedy.

Reference:
WHSCA, S.37, S.39

1.30 Review Board Structure

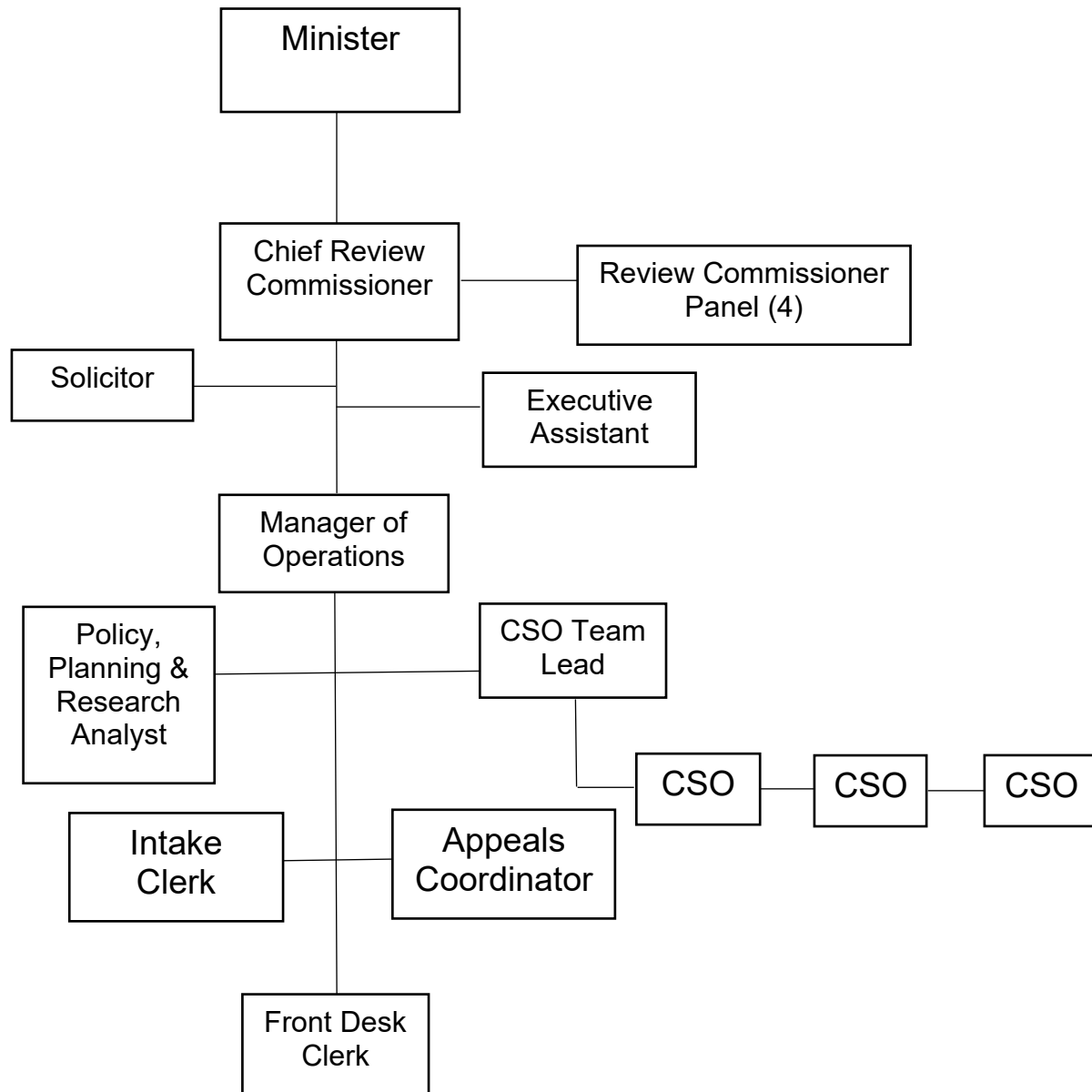
1.31 Review Commissioners

The Review Board consists of a Panel of Review Commissioners, one of whom is appointed Chief Review Commissioner by the Lieutenant-Governor in Council. Up to seven Review Commissioners, including the Chief Review Commissioner, may be appointed to the Panel.

Under Section 23 of the **WHSCA**, the Chief Review Commissioner shall review a matter brought before them under Section 39(6)(a)(b) or shall refer the matter to another Review Commissioner. Review Commissioners act as single adjudicators in conducting the hearing process and in reviewing WorkplaceNL decisions.

Reference:
WHSCA, S.33-34, S.37, S.39(6)(a)(b)
WCIRB Regulations, S.2

1.32 Review Board Organizational Chart



1.33 Review Board Staff and Office Location

Review Board staff support the functions of the Board to ensure Request for Review applications are promptly processed and cases are efficiently managed. Review Board staff also provide support to the Chief Review Commissioner and the Panel of Review Commissioners throughout the hearing and decision-making processes.

The Review Board's office is located in Mount Pearl, NL and may be contacted at:

Workers' Compensation Independent Review Board
2nd Floor, Dorset Building
6 Mount Carson Avenue
Mount Pearl, NL A1N 3K4

Telephone: (709) 729-5542 Toll Free: 1-888-336-1111
Fax: (709) 729-6956 Email: wcirb@gov.nl.ca

Additional information regarding the Review Board and the review process may be found on the Review Board's website at <http://www.gov.nl.ca/wcirb>.

Reference:
WHSCA, S.32 and S.34

2.00 GENERAL

2.10 Protection of Personal Information

The Review Board collects information necessary for the adjudication of workers' compensation cases and is subject to the provisions of the **Access to Information and Protection of Privacy Act (ATIPPA), 2015**. The release of personal information through the review process is also subject to restrictions under the **ATIPPA**.

The Review Board recognizes the sensitive nature of information collected and maintained for the purpose of the review process. The Review Board is responsible for ensuring the privacy and protection of personal information through secure physical, digital, administrative and technical safeguards appropriate to the sensitivity of the information.

The Review Board will release information concerning a case under review only to individuals who are authorized to receive the information. These may include the worker, a worker's dependent, the employer, and the authorized representatives for these parties. For instance, the Review Board will not release information to a representative unless there is an Authorized Representative Form submitted to the Review Board authorizing the release of information to that individual.

All parties are responsible for ensuring they do not disclose the information provided to them for reasons other than the review process and for keeping the information confidential and secure. If an employer is participating in a review of a worker's case, the employer's access to documents will be subject to certain restrictions under the **ATIPPA**. To request access to a worker's documents, the employer must first submit an Employer's Notice of Intention to Participate Form. The employer must agree in writing to keep the documents confidential and secure and not to use or disclose the documents for purposes other than participating in the review proceedings.

The Review Board will make every effort to ensure that personal information needed for the review process is as accurate and as up to date as possible. In instances where a change or correction may be required to a party's personal information, the Review Board should be notified immediately. Changes may include address, telephone number, or a change in the status of the claim with WorkplaceNL.

In the event of unauthorized access or disclosure of personal information, the Review Board will take all necessary steps to contain the unauthorized release. The Review Board will notify the affected individuals as soon as possible and will take immediate action to recover the information. The Review Board will investigate the cause of the unauthorized access or disclosure and take all reasonable steps to ensure future situations do not happen again.

For assistance regarding the protection and privacy of personal information, please contact the Review Board's Manager. Refer to the Review Board's website at www.gov.nl.ca/wcirb, or office, for copies of the Authorized Representative form and the Employer's Notice of Participation form.

Reference:
Access to Information and Protection of Privacy Act (ATIPPA), 2015

2.20 Definition of Review Participants

For the purpose of the review process, any or all of the following parties may be considered review participants:

- (a) **Authorized Representative(s)**: means an individual who is authorized to represent a worker, employer, or dependent (e.g. union representative, lawyer, friend, family member, consultant, etc.). An Authorized Representative Consent Form must be completed and submitted to the Review Board before any information will be released to the representative. Refer to the Review Board's website at <http://www.gov.nl.ca/wcirb>, or office, for a copy of the Authorized Representative Consent Form.
- (b) **Chief Review Commissioner**: means the head of the Panel of Review Commissioners who is appointed under Section 33 of the **WHSCA**.
- (c) **WorkplaceNL**: WorkplaceNL has standing and may appear at Review Board hearings anytime.
- (d) **Dependent**: means a dependent of a worker who may have the right to initiate an application or continue an application on behalf of a deceased worker's claim.
- (e) **Employer**: means an employer of a worker who has a right to participate in a worker's hearing to address WorkplaceNL's decision under review. Employers may also request a review of a final decision of WorkplaceNL that affects them. Employers who wish to participate in a worker's review proceeding must complete an Employer's Notice of Intention to Participate Form. Refer to the Review Board's website at <http://www.gov.nl.ca/wcirb>, or office, for a copy of the Employer's Notice of Intention to Participate Form.
- (f) **Review Commissioner**: means a single Review Commissioner who conducts the hearing and reviews WorkplaceNL's decision. Following the hearing, the Review Commissioner will render a decision, in writing, on the case of the worker, employer, or dependent.
- (g) **Witness**: means an individual who provides testimony at a Review Board hearing and who would have generally been involved in the case under review.
- (h) **Worker**: means a worker who has the right to request a review of WorkplaceNL's Internal Review decision respecting their workers' compensation claim. The employer may also object to an Internal Review decision of a worker's claim and the worker has the right to participate in the employer's application.

Reference:
WHSCA, S.23, S.33, S.39
WCIRB Regulations, S.5

2.30 Rights and Responsibilities of Review Participants

Rights of the Review Participants:

- All review participants have the right to be treated in a respectful manner and are entitled to a timely, independent, and fair hearing.
- Review participants have the right to be notified and receive a copy of a filed Request for Review application once it has been accepted by the Review Board.

- Workers, employers, and dependents have the right to representation, or they may choose to represent themselves, throughout the review process.
- Workers, employers, dependents and their representatives have the right to receive a copy of WorkplaceNL's file information (the Case Description), subject to restrictions under **ATIPPA, 2015**. The Case Description consists of documents used by WorkplaceNL to make its decision, such as medical reports, return to work plans, assessment information, etc.
- Confirmed review participants have the right to be notified by the Review Board of the date, time and location or method of the hearing.
- Workers, employers, dependents and their representatives involved in the review proceedings have the right to receive a copy of the Review Board's final decision. WorkplaceNL will always receive a copy of the final decision.

Responsibilities of the Review Participants:

- Workers, employers, and dependents are responsible for ensuring their Request for Review application is completed in full.
- Review participants, who have access to the relevant WorkplaceNL file information, are responsible to ensure the protection of the information and must sign confidentiality agreements as required by the Review Board.
- Review participants are responsible to be prepared to proceed when contacted by the Review Board with a hearing date.
- Review participants are responsible for respecting the protocol and civility of the proceedings in the Hearing Room. Refer to **Section 5.44** of this Manual for additional information regarding disruptive behavior.
- Workers, employers, and dependents are responsible to notify the Review Board of any change in the status of their claim with WorkplaceNL or to their contact information.
- Upon receipt of the Case Description, review participants are responsible to review their copy and notify the Review Board immediately of any discrepancies in the file, or with the stated issue(s) under review.

2.40 Representation

A worker, employer, or dependent may choose to represent themselves, or may designate someone to represent them throughout the review proceedings, such as a workers' advisor, lawyer, union representative, consultant, friend, etc.

An Authorized Representative Consent Form must be signed by the person requiring representation and submitted to the Review Board as soon as possible. The Authorized Representative Consent Form authorizes an individual to act on the person's behalf and provides consent to the release of their file information. The authorized representative will receive a copy of the file information pertaining to the case and a copy of the final decision when rendered.

The Review Board will not release any information respecting a worker, employer, or dependent to a person who is not deemed to be their authorized representative. Refer to the Review Board's website at <http://www.gov.nl.ca/wcirb>, or office, for a copy of the Authorized Representative Consent Form.

It is important for representatives to become familiar with the case file and be ready to proceed when contacted for a hearing. The representative should also understand the proceedings during the hearing. Representatives should refer to **Part III** of the **WHSCA**, as well as this Manual, for general direction and information regarding the review process.

Only the Review Commissioner, representatives, or parties who represent themselves, have the right to ask questions of witnesses at the review hearing. Representatives must conduct themselves in a respectful manner throughout the review process and maintain proper protocol with respect to their questioning conduct. The presiding Review Commissioner has the authority to remove a representative or any other individual from the Hearing Room if they become disruptive to the proceedings.

There are worker and employer advisors independent of the Review Board and WorkplaceNL who can provide no cost assistance throughout the review process:

Office of the Workers' Advisor

St. John's Office:

P. O. Box 8597, Stn. A	Phone: (709) 754-3927
330 Portugal Cove Place	Toll Free: 1-800-563-1998
St. John's, NL A1B 3P2	Fax: (709) 754-3928

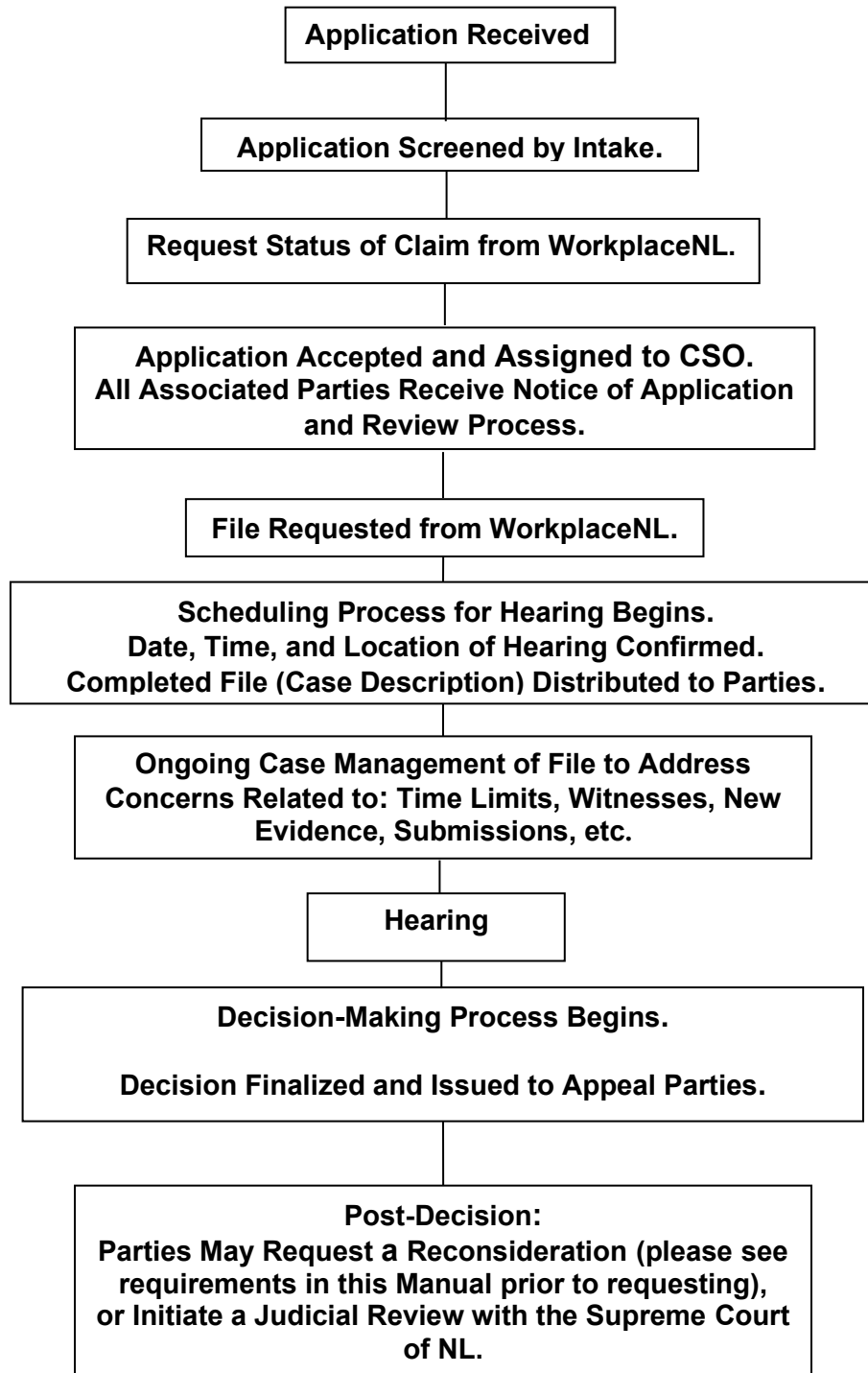
Office of the Employers' Advisor

Newfoundland & Labrador Employers' Council:

129 Glencoe Drive	Phone: (709) 368-6532
Donovan's Industrial Park	Toll Free: 1-888-738-5900
Mt. Pearl, NL A1N 4S7	Fax: (709) 368-6543

**Reference:
WHSCA, S.39**

2.50 Review Process Chart



3.00 APPLICATION PROCESS

3.10 Who May Request a Review?

A worker, a dependent of a deceased worker, or an employer may request a review of a decision of WorkplaceNL's Internal Review Division pursuant to s.39 of the **WHSCA**. Refer to **Sections 3.30** and **3.40** of this Manual for time limits and further information about requesting a review.

Reference:
WHSCA, S.39
WCIRB Regulations, S.5

3.20 What May be Reviewed

A Request for Review of WorkplaceNL's Internal Review decision may be in relation to a variety of issues. The following list is a sample of some of the issues the Review Board would consider:

- Temporary Earnings Loss benefits
- Extended Earnings Loss benefits
- Permanent Functional Impairment Awards
- Proportionate compensation
- Rehabilitation services
- Reopening requests
- Recurrence requests
- Return to work obligations of a worker or employer
- Objection to an assessment decision
- Objection to a worker's claim
- Pension Replacement benefits
- Medical aid issues such as chiropractic care, physiotherapy services, etc.

Reference:
WHSCA, S.37

3.30 Time Limits for Requesting a Review

Before requesting a review by the Review Board, a workers' compensation case must have "exhausted" all levels of review at WorkplaceNL. A case has been "exhausted" when a party is in receipt of a decision from WorkplaceNL's Internal Review Division. The Internal Review Division is the last level of review at WorkplaceNL and represents the final decision on any matter reviewed within WorkplaceNL.

An applicant will have 30 calendar days from receipt of WorkplaceNL's Internal Review decision in which to request a review by the WCIRB. If the application is not received in the required timeframe by the Review Board, an application for an extension of time must be submitted to the Chief Review Commissioner. The Chief Review Commissioner will decide extension requests on a case-by-case basis. Refer to the Review Board's website at <http://www.gov.nl.ca/wcirb>, or office, for a copy of the Extension of Time Application.

Pursuant to s.39 of the **WHSCA**, the Review Board cannot accept a Request for Review application more than one year (365 days) from the date WorkplaceNL communicated its Internal Review decision to the person making the application.

Reference:
WHSCA, S.39

3.40 How to Request a Review

To begin the review process, an application must be made to the Chief Review Commissioner for a review of WorkplaceNL's Internal Review decision. To be valid, the Request for Review application must contain all the required information, be signed and dated by the applicant. The Request for Review application is also required to:

- be submitted within 30 calendar days of receiving the final Internal Review decision from WorkplaceNL;
- be in writing and identify how WorkplaceNL's decision is contrary to the **WHSCA**, Regulations and WorkplaceNL's policies; and
- be as specific as possible when identifying how WorkplaceNL's decision is contrary to the **WHSCA**, Regulations and WorkplaceNL's policies. If the application is too vague, or is missing important information, it may not be accepted by the Chief Review Commissioner.

The Review Board encourages all applicants to provide as much information on their Request for Review application as possible to ensure it will be processed without delay. The following should be included on the application:

- ensure that the Request for Review Form is signed by the person requesting the review (i.e. the worker, the employer or a dependent),
- include WorkplaceNL claim number or firm number,
- provide the worker and employer contact information,
- identify the decision of WorkplaceNL to be reviewed and attach a copy of the decision,
- state why the decision is incorrect; and
- identify the type of benefit or remedy requested,
- complete other permissions detailed on the form such as extension of time, authorized representative, etc. if required.

To assist in making the application process as easy as possible, the Review Board has a Request for Review application form which includes sections for the authorized representative and extension of time information. If an applicant does not know if they require an authorized representative at the time they are requesting the review, a separate form can be completed and submitted at a later date. A Request for Review application may be obtained from the Review Board's office, or it may be completed and submitted online, or printed from the Review Board's website at <http://www.gov.nl.ca/wcirb> and submitted by email, post, or fax.

In some cases, the Review Board will accept written correspondence to initiate the request for review; however, the applicant will likely be asked to also submit a completed Request for Review application form. In either case, the Review Board recommends that a copy of the Internal Review decision be included with the request.

The Request for Review application may be submitted by post, fax, email, or in person at the Review Board office in Mount Pearl, NL.

Reference:
WHSCA, S.39
WCIRB Regulations, S.5

3.50 Costs and Expenses of Participating in the Review Process

The Review Board does not pay for expenses associated with the review process. Workers, employers, dependents, and representatives are responsible for any costs related to their participation in the review and their attendance at the review hearing. For further information on witnesses, fees and costs refer to **Section 4.60** of this Manual.

3.60 Dismissing a Request for Review Application

The Chief Review Commissioner may dismiss a request for review that they consider improper or dilatory.

WCIRB Regulations, S.16

4.00 Pre-Hearing Process

4.10 Intake and Acceptance

Once the Review Board receives the Request for Review application, a Review Board case number will be assigned to the application. This case number is used to process the Request for Review application and should be quoted whenever contacting the Review Board concerning the application.

The Review Board intake staff will screen the application to determine:

- if sufficient information has been provided on the application,
- whether the applicant will need to be contacted to clarify their request,
- whether an Extension of Time application is necessary; and
- whether other parties are required to be notified of the application (i.e. the employer may be notified of a worker's application upon acceptance).

If a Request for Review application has been submitted after 30 days from receipt of WorkplaceNL's Internal Review decision, the applicant will be required to submit an Extension of Time form. The Review Board will not take any further action until the Extension of Time Form has been received. Refer to the Review Board's website at <http://www.gov.nl.ca/wcirb>, or office, for a copy of the Request for Review application and Extension of Time Form.

The Review Board will next notify WorkplaceNL, in writing, that the Request for Review application has been received. The Review Board will also ask WorkplaceNL to confirm whether or not the case has been finalized through all levels of review within WorkplaceNL and to provide a copy of the file documents used in making the decision.

Once WorkplaceNL confirms the matter has finalized all levels of review and its staff supplies the necessary information, the Review Board will notify the applicant and other interested parties (i.e. worker, employer and representatives) in writing that the Request for Review application has been accepted.

The case will be assigned to a Review Board Client Service Officer (CSO). The CSO will act as the parties' liaison for all actions on the case. The CSO will prepare a Case Description (a copy of WorkplaceNL's file) for the purpose of the hearing and contact all parties to schedule a hearing date and time.

Reference:
WHSCA S.39
WCIRB Regulations 5, 6, 14

4.20 Documents for the Review Process

4.21 Case Description

At least two weeks before the scheduled hearing, the Review Board will send a copy of WorkplaceNL's file documents (the Case Description) to the review participants who have confirmed their participation in the hearing (i.e. the worker, the employer, the representatives and WorkplaceNL's representative). The Review Commissioner assigned to hear the case will also receive a copy.

The Case Description consists of the documents used by WorkplaceNL to make its decision. The Case Description may include medical reports, return to work plans, assessment information, claim notes, decision letters and other relevant correspondence. The Review Board staff will prepare the Case Description sections in chronological order with numbered pages for easy reference.

Review participants are responsible for identifying any omissions or errors in the file and immediately notifying the Review Board of same. The issue(s) to be reviewed will also be stated in the Case Description and any discrepancies with the issue(s) should also be reported immediately to the Review Board.

Reference:
WHSCA, S.38,151
WCIRB Regulation 6, 7

4.22 Written Submissions

Any of the review participants (worker, employer, dependent, WorkplaceNL, or representatives) may present written submissions in support of their position to the Review Board for the review hearing. If a hearing is scheduled at the Review Board's location in Mount Pearl, the submissions should be provided at least three days in advance of the hearing so that the Review Board can prepare and distribute copies to the other review participants. Where hearings take place in regions throughout the province other than the Mount Pearl location, written submissions should be submitted to the Review Board office at least five days in advance of the hearing. This is to ensure that staff will have time to prepare and distribute the copies to the out-of-town location. Participants who fail to provide their submissions within these timeframes will be responsible for arranging their own delivery of the submissions to the hearing location in time for the hearing.

The Review Commissioner has the discretion to accept written submissions that are presented at the hearing. If a participant is submitting a written copy of their argument at the hearing, additional copies should also be provided for the other participants.

When providing a submission, it is important to note that neither the Review Board, nor the Review Commissioner, will accept information not previously reviewed by WorkplaceNL in making their final decision. Information not previously reviewed by WorkplaceNL is considered new evidence. Refer to **Section 5.61** for further information and an explanation of new evidence.

Reference:
WHSCA, S.38, 151

4.30 Scheduling

The CSO assigned to the case will contact the review participants and make every reasonable effort to set a hearing date that is mutually convenient for everyone. The Review Board generally allows two hours for a hearing and an hour between each scheduled hearing. Please advise the CSO assigned to the case if more than two hours is anticipated for the hearing.

In certain cases where efforts to schedule a mutually convenient date are not successful, the Review Board reserves the right to set a date to ensure an efficient and fair process for all participants. Once a hearing date is set, the Review Board will notify WorkplaceNL and the review participants in writing to inform of the details of the hearing. If a participant fails to appear at the scheduled hearing, the Review Commissioner may proceed in their absence.

Reference:
WHSCA, S.39

4.40 Postponements

If a review participant is unable to attend the scheduled hearing, they are required to contact the Review Board in writing as soon as possible. Satisfactory explanations **must** be submitted, if a hearing postponement is requested. A request for a postponement should include the reason(s) for the request and the amount of time needed for the postponement.

Given the extensive coordination efforts that are required to schedule a hearing, the Review Board **does not** automatically grant postponements. The Review Board will consider the following factors in considering a request for postponement:

- whether granting or denying the request would negatively affect any party,
- whether sufficient efforts were made to avoid the need for a postponement,
- whether the request for postponement was made at the earliest possible time,
- whether there were previous postponements in the case in question,
- whether there were serious factors for postponement such as an illness or death, and
- whether there may need to be a postponement due to adverse weather conditions.

If the Review Board grants a postponement, staff will notify all the participants and set a new hearing date.

Reference:
WHSCA, S.39

4.50 Withdrawals

Applicants may also withdraw their Request for Review at any time during the review process without explanation. If an applicant chooses to withdraw, this will terminate all activity on the case with the Review Board respecting the decision under review.

The Review Board should be notified in writing of the intention to withdraw as soon as possible. The Review Board will then provide written notification and confirmation of the withdrawal to all other review participants.

4.60 Witnesses and Subpoenas

4.61 Witnesses

In certain circumstances, review participants may bring witnesses to the hearing to support their case. Generally speaking, witnesses should only be those individuals previously involved in the claim or in the issue under review and would have already provided information to WorkplaceNL in the form of medical reports, functional assessments, or statements. For example, a physician can be a witness if WorkplaceNL has already reviewed their medical report, and this material was considered in its decision-making process.

The Review Board requires written notification at least two weeks in advance of the hearing if it is necessary for a witness to appear at the hearing. Not providing adequate notice to the Review Board may result in hearing delays. The witness notification should contain the following information:

- a. the name of the witness,
- b. a summary of the nature of the evidence the witness will provide, and
- c. a listing of relevant documentation and information that the witness may bring.

Once the Review Board receives the notice, it will let everyone involved in the hearing know about the witness's participation in the case. Review participants who are calling witnesses are responsible for all costs associated with their attendance at the hearing.

A worker may be a witness in a hearing but notice of the worker as a witness is not necessary.

Reference:
WHSCA, S.38, 151
WCIRB Regulations S.8, S.9

4.62 Subpoenas

Any of the parties involved in the review may ask the Review Board to issue a subpoena. A subpoena is a legal document used to compel the attendance of a witness at a hearing. If the Review Board accepts the request for a subpoena, it will prepare the subpoena. However, the party requesting the subpoena is responsible for serving (delivering) it to the witness and for the expenses involved in serving it to the witness, or any costs associated with the attendance of the witness at the hearing.

A. Requesting the Subpoena

Parties who wish to subpoena a witness may submit the request in writing to the Review Board at least two weeks before the hearing date. The request should contain the following information:

- a. name and address of the person to be subpoenaed,
- b. a summary of the nature of the evidence the witness will provide,
- c. a listing of relevant documentation and information the witness should bring; and
- d. the reason why the subpoena is necessary to compel attendance.

The Review Board will examine the request and determine whether it is appropriate to issue the subpoena. In determining the appropriateness of issuing a subpoena, the Review Board may consider the following:

- a. whether the witness's evidence is relevant to WorkplaceNL's decision under review,
- b. whether the witness requires a subpoena to obtain time off from work to attend the hearing, and
- c. whether a subpoena is necessary to compel the witness's attendance.

The Review Board will prepare and issue the subpoena to the requesting party who will then serve it to the witness. The Review Board will keep a copy for its records.

B. Serving the Subpoena

It is the responsibility of the requesting party to serve the subpoena to the witness. It is also the responsibility of the requesting party to pay for any and all fees, or expenses involved in the serving of the subpoena and for the attendance of the witness.

Under the **Rules of the Supreme Court, 1986**, the procedure for serving a subpoena requires that:

- A copy of the subpoena must be personally served to the witness by the requesting party or their representative.
- The witness is entitled to see the original subpoena issued by the Review Board upon their request.
- A witness is not bound to appear or give evidence unless the appropriate witness fee has been provided to the witness by the requesting party when serving the subpoena:
 - i. a \$100 fee if the witness is to testify as an expert or in relation to matters pertaining to their profession, and
 - ii. a \$50 fee in every other case.
- The party requesting the subpoena must demonstrate to the Review Board that they have properly served the subpoena by signing an Affidavit of Service. The affidavit confirms the personal service of the subpoena and the payment of the appropriate witness fee(s).

If a subpoenaed witness does not appear at the hearing, the Review Commissioner will determine whether the subpoena was properly served and may:

- proceed without the witness if it is established their attendance is not essential to the case,
- adjourn the hearing and reissue the subpoena, or
- proceed with contempt proceedings against the witness as per Section 4 of the **Public Investigations Evidence Act**.

Reference:
WHSCA, S.38, 151
WCIRB Regulations, S.8, S.9, S.13
Supreme Court of NL: Rule 46.23, 46.25 and 55 (Appendix)
Public Investigations Evidence Act

5.00 HEARING PROCESS

5.10 How to Prepare for the Hearing

It is important that all parties involved in the hearing be familiar with the contents of the Case Description and WorkplaceNL's Internal Review decision under review. The parties should be prepared to explain to the Review Commissioner why they believe WorkplaceNL's decision is either correct or incorrect. The parties should also reference the documents contained in the file to support their position.

The Review Commissioner will take into account the evidence and submissions presented at the hearing, as well as testimony and any other relevant documentation. The Review Commissioner will provide a written decision with reasons after the hearing.

The Review Board provides a Decision Search System (DSS) on its website (www.gov.nl.ca/wcirb) where decisions from 2013 onwards are published on a regular basis. The DSS is a useful research tool for preparing for the review hearing. Decisions can be sorted by issue, Review Commissioner, policy, outcome, etc.

Reference:
WHSCA, S.39

5.20 Hearing Methods

The Review Board may conduct a hearing in one of the following ways:

- an oral hearing, where the parties are in person, or via video or teleconference; or
- a "documents only/paper review" review conducted by the Review Commissioner in the applicant's absence. That is, where there is an applicant who does not wish to attend the hearing and where there are no other parties involved in the case, or the other parties also do not wish to attend.

Reference:
WHSCA, S.39

5.30 Hearing Locations

Review Board hearings are held regularly in the following locations throughout the Province:

- Mount Pearl
- Gander
- Grand Falls-Windsor
- Corner Brook
- Labrador City
- Happy Valley-Goose Bay

5.40 Hearing Procedure

A single Review Commissioner conducts Review Board hearings. The Review Commissioner is empowered by the **Public Inquiries Act** and the **Public Investigations Evidence Act** to ask questions and call witnesses. The worker, the employer and/or their representatives may attend the hearing. WorkplaceNL has standing at Review Board hearings and its representatives may also appear on any case.

All participants should appear at the hearing on time. Hearings generally last between one or two hours in length, depending on the complexity of the issues. If it is anticipated that a hearing may take longer, the hearing may be adjourned or reconvened for another time convenient for all participants. If a participant anticipates that they will require more than two hours for the hearing, they should advise the Review Board at the time of scheduling. Refer to **Section 4.30** of this Manual for additional information on scheduling.

Dress is informal and breaks may be taken as required. Cellular devices must be set to mute or silent while in the Hearing Room. The Review Board should be advised in advance of any special arrangements required for the hearing.

The procedure at the hearing may vary slightly, depending on the particulars of a case.

- i. All participants will meet in the Hearing Room and the Review Commissioner will greet everyone and explain the hearing procedure.
- ii. The hearing proceedings are recorded. The Review Commissioner will state for the record the name, Review Board case number, WorkplaceNL claim or firm number, the date of the WorkplaceNL decision under review, and the party who is objecting to the decision.
- iii. The Review Commissioner will identify the issues under review and ask the participants if they agree whether these are the issues to be reviewed.
- iv. The Review Commissioner will ask participants to confirm, for the record, their consent to the use of the Case Description.
- v. The Review Commissioner will ask the participants whether they feel there are any errors or omissions contained in the Case Description.
- vi. The Review Commissioner will ask all participants to state, for the record, their names and their role at the hearing (e.g. the worker, the employer, or a representative).
- vii. The applicant (the party who requested the review) will be the first to present their case. There may be questions from the Review Commissioner and/or other participants.
- viii. The other participants will then have an opportunity to present their case. Again, there may be questions, and the applicant will receive a further opportunity to address the presentations of the other participants.
- ix. All participants will be given sufficient time to present their case, including presenting evidence and calling witnesses. However, the Review Commissioner reserves the right to limit presentations which are unnecessary, excessive, or not relevant to the proceedings.
- x. The applicant or their representative may summarize their position at the end of the hearing.

- xi. The Review Commissioner has the discretion to accept written submissions at the hearing. If a party is submitting a copy of their argument in writing at the hearing, additional copies should also be provided for the other review participants. Refer to Section **4.22** of this Manual for additional information regarding written submissions.
- xii. The Review Commissioner will not accept new evidence. Refer to **Section 5.61** of this Manual for additional information and a description of new evidence.
- xiii. The Review Commissioner will exclude witnesses from the Hearing Room until they are required to give testimony. This exclusion does not apply to the worker, employer, dependent or the representatives, as they are considered parties to the review process.
- xiv. Witnesses will be affirmed, or sworn in, before giving their testimony. After providing testimony and answering questions, the witness may be dismissed from the Hearing Room and asked to wait until the hearing is concluded.
- xv. The Review Commissioner will conclude the hearing by asking the participants if they have finished their presentation.
- xvi. The Review Commissioner will explain that a written decision will be sent to the participants, taking into consideration the evidence and testimony at the hearing, as well as any submissions and the relevant file information.
- xvii. The Review Commissioner will thank the participants for their presentations and will end the hearing.

Reference:
WHSCA, S. 38, 151 and S.39

5.41 Hearing Recorded

The Review Commissioner will record the review proceedings. No other recording equipment is permitted in the Hearing Room.

5.42 Breaks

In some cases, it may be necessary to take a break if the Review Commissioner anticipates the hearing will continue for longer than one-and-a-half to two hours. The Review Commissioner may also recess for a break at any time during the hearing if they deem it necessary, or if a participant indicates to the Review Commissioner, they require a break.

5.43 Observers

The Review Board hearings are not open to the public. However, observers such as family members, union and employer officials may be permitted to sit in on the hearing. Observers will be permitted in the Hearing Room unless there are compelling reasons for being excluded. These reasons could include sensitive issues, matters of space, or potential security problems. The Chief Review Commissioner must approve any request from media representatives to attend a hearing as observers.

5.44 Disruptive Behaviour

As previously noted, all participants at the hearing shall behave respectfully. Should a participant's conduct become disruptive during the hearing, the presiding Review Commissioner will advise the participant that their behaviour is unacceptable and that they will be excluded from the hearing if such behaviour continues. If the disruptive behaviour continues, the Review Commissioner has the authority to order the participant to remove themselves from the hearing and the hearing may continue in their absence. The Review Commissioner may also adjourn the hearing for a later date if necessary.

5.45 Adjournments

An adjournment is a temporary ending to the hearing process. A Review Commissioner may adjourn a hearing at any time during the hearing process for any reason deemed appropriate. For example, an adjournment may take place if a subpoenaed witness failed to appear, if there is a disruption, if the hearing is longer than anticipated, or if the Review Commissioner requires additional information to review the case. After the adjournment, the Review Board staff will contact the participants to schedule a new date for the follow-up hearing.

5.50 Disclosure

The Review Commissioner may order a party to provide information or documents they deem necessary for the review process. If the party does not provide the required information by the specified date, the Review Commissioner has the authority to make a decision without that information.

Reference:
WHSCA, S.38 151
WCIRB Regulations S.7, S.8

5.60 Evidence at the Hearing

Evidence at a hearing may be presented in several forms:

- **Oral:** first-hand accounts or verbal statements by a party or their witness,
- **Documented:** written, videotaped, or another form of prerecorded evidence,
- **Expert evidence:** oral or documentary statements from an expert pertaining to particular areas of a case.

Reference:
WCIRB Regulations, S.7

5.61 New Evidence

The Review Board will not review new evidence at the hearing that was not previously reviewed by WorkplaceNL in relation to the matter before the Review Commissioner. If there is new evidence for review, it must first be submitted to WorkplaceNL for their review before it is submitted to the Review Board, as the new evidence may affect the status of the claim. Some examples of new evidence may include:

- Medical reports
- Co-worker statements
- Witness statements

- Payroll information

The Review Board does not generally consider information and reference material from internet sites as new evidence and may be submitted as appropriate. Review Commissioners are not bound by any precedent or document submitted with respect to the nature of the information from internet sites or reference material.

Reference:
WCIRB Regulations, S.7

5.62 Witness Testimony

Parties may bring witnesses to the hearing to support their case. Witnesses should have been involved in the case under review and would have already provided information to WorkplaceNL in the form of medical reports, functional assessments, or statements. For example, a physician can be a witness if WorkplaceNL has already reviewed their medical report, and this material was considered in its decision-making process. Refer to **Section 4.60** of this Manual for additional information on witnesses.

A worker or employer may testify on their own behalf at the hearing. Other witnesses are subject to a notice of confirmation of attendance by the Review Board.

Reference:
WCIRB Regulations, S.9

5.70 Hearing Transcript

The Review Board does not provide typed transcripts of the recorded hearing except in exceptional circumstances. The Review Board will supply digital copies of the recorded hearing in CD format upon written request by a review participant.

There may be circumstances where typed transcripts will be provided:

- When a hearing has been adjourned for a lengthy period, the Review Board may provide a typed copy of the transcript to the participants in order to prepare for the matter on an ongoing basis.
- If the assigned Review Commissioner is unable to complete their review of a case, a copy of the transcript may be provided to another Review Commissioner chosen to complete the case.
- The Review Board will provide typed transcripts of the hearing to participants who are involved in a judicial review of a decision made by the Review Board as part of the disclosure of file information to the Supreme Court.

5.80 Failure to Attend

Given the extensive coordination efforts that are required to schedule a hearing, parties are required to notify the Review Board immediately if they cannot attend the review hearing.

If a party fails to attend the review hearing without providing notice to the Review Board and the Review Commissioner is satisfied that they had received adequate notice of the scheduled hearing, the Review Commissioner may:

- hear the matter on the basis of the Case Description before the Review Commissioner and represented parties who are attending the hearing; or
- delay the case until a later date, subject to any conditions imposed by the Review Commissioner.

The decision to proceed with the hearing rests with the presiding Review Commissioner.

Reference:
WHSCA, S.40(8)

5.90 Confirmation of Hearing Attendance

The Review Board may provide a letter confirming a participant's attendance at the review hearing if requested. Upon arrival at the Review Board's office for the hearing, please indicate to staff that such a letter is required, and it will be provided after the hearing concludes.

6.00 Decision Process

6.10 Who Makes the Decision

- The Review Commissioner who conducts the hearing is the only person authorized to provide the decision. Under the principles of natural justice, the Review Commissioner who heard the evidence and argument in a matter makes the decision arising out of it.
- A Review Commissioner will communicate their decision, with reasons, in writing.
- The Review Board will not disclose the outcome of a matter by telephone, email, or in-person inquiries.
- Final decisions are released to review participants by mail or may be picked up in person at the Review Board office with the presentation of photographic identification (e.g. driver's license).

Reference:
WHSCA, S.39, S.40

6.20 Types of Decisions

Under Section 40 of the **WHSCA**, a Review Commissioner will provide reasons for a decision in writing and may confirm, reverse, or modify a WorkplaceNL decision. The Review Commissioner may uphold WorkplaceNL's decision or set aside the decision and identify how WorkplaceNL's decision was contrary to the **WHSCA, Regulations** and policies. The Review Commissioner also has the authority to refer any matter back to WorkplaceNL for further action or decision-making.

Review Board decisions are final and binding. The end of the decision will indicate its status as:

- Allowed
- Denied
- Allowed/Denied in Part
- Referred Back to WorkplaceNL

If the Review Commissioner allows, or refers, a decision back to WorkplaceNL, parties must follow-up with WorkplaceNL for action on the Review Board decision. If the review is denied, the only other recourse would be to:

- Initiate a **Request for Reconsideration** application. See **Section 7.10** of this Manual for the prerequisites for a reconsideration; or
- File an **Originating Application** with the Supreme Court of Newfoundland and Labrador requesting a judicial review. See **Section 7.20** of this Manual for application to Supreme Court.

Reference:
WHSCA, S.37, S.40 - 41
WCIRB Regulations S.11

6.30 Amended Decisions

The Review Board may amend a decision if a typographical or grammatical error is discovered after the decision has been released. In such circumstances, the Review Board will correct the error and reissue the decision to the review participants with the original decision number followed by an “A” to indicate that it was amended.

6.40 Published Decisions

Decisions of the Review Board are considered public documents once rendered and are uploaded to the Decision Search System (DSS) for public viewing. Before uploading decisions to the DSS, all personal identifiers are removed from the decision such as the worker’s and employer’s names, the Review Board case number and the workers’ compensation claim or firm numbers.

Decisions from 2013 onwards can be searched by date range, issue, decision number, etc. and can be accessed through the Review Board’s website at www.gov.nl.ca/wcirb.

7.00 POST-DECISION

7.10 Reconsideration Requests

Under the authority of **Section 41** of the **WHSCA**, the Review Board may reconsider any decision it has made and either confirm, amend, or revoke the decision.

A participant identified as a party to the Request for Review application, may submit a Request for Reconsideration. The reconsideration process is not a means to revisit an issue and reargue a case because a party does not agree with a Review Commissioner's final decision. There must be legal grounds to initiate a request for reconsideration. These may include:

- The Review Commissioner failed to apply the appropriate sections of the **WHSCA**, Regulations and/or policies.
- The Review Commissioner exceeded the authority provided under the **WHSCA** in relation to a matter under review.
- There was a substantive defect in the decision-making process which affected the outcome of the decision.

The following outlines the steps in the Reconsideration process:

- There are no forms to fill out to submit a Request for Reconsideration. A Request for Reconsideration must be made in writing to the Chief Review Commissioner within 30 days of receipt of the Review Board decision.
- In order for the Request for Reconsideration to meet the threshold for reconsideration, the request should state the reasons for making the request and identify any errors in law or jurisdiction that is alleged the Review Commissioner made in rendering their decision. **New evidence is not considered grounds for reconsidering a case.**
- Upon receipt of the Request for Reconsideration, the Review Board will notify all the parties who were involved in the case within 10 days that the request has been made. The parties will be invited to make submissions within 14 days as to why they believe the Request for Reconsideration should or should not be granted. The Request for Reconsideration applicant will be provided with a copy of the submissions received from the parties and will have one week to provide a response to the submissions.
- If the Chief Review Commissioner made the original decision, they will refer the Request for Reconsideration to an alternate Review Commissioner for consideration after the submission deadline.
- The new Review Commissioner will review the Request for Reconsideration, the submissions received and the original decision. They will make a determination, with appropriate reasons, on whether the request meets the threshold for reconsideration and whether the Request for Reconsideration should be granted.
- If it is established that the Request for Reconsideration meets the threshold for reconsideration, then the request may be granted. The Review Commissioner will then determine whether the case requires a hearing to address the matter.

- When a reconsideration hearing is warranted, the Review Board will contact all parties involved to schedule a hearing. There may be circumstances where a hearing is not required and the matter will be dealt with through correspondence to all parties.
- If a determination is made that there was no error in the original decision, the Review Commissioner will deny the Request for Reconsideration and the original Review Board decision remains the final decision. This will be completed through correspondence to the party requesting the reconsideration and copied to all participants involved in the request.
- A reconsideration hearing is not a means to review a case in its entirety. The focus of the reconsideration hearing is to determine whether or not the decision of the previous Review Commissioner was made in error. The Review Board expects all parties to be prepared to address the Request for Reconsideration at the hearing.
- New evidence will not be reviewed at the reconsideration hearing. New evidence is considered to be any information such as a medical assessment report, physician's report, etc. which was not previously considered by WorkplaceNL.
- Following the reconsideration hearing, the Review Commissioner will provide a written decision, with reasons.
- The Review Board will send a copy of the reconsideration decision to all parties who participated in the reconsideration process. The Review Board identifies reconsideration decisions by adding an "R" to the original Review Board decision number to show it is a reconsideration of the previous decision.
- Reconsideration decisions are final. If a party is not satisfied with the outcome of the decision, they may file an Originating Application with the Supreme Court of Newfoundland and Labrador.

Reference:
WHSCA, S.41

7.20 Application to the Supreme Court of Newfoundland and Labrador

If a party to the review is of the opinion the decision of a Review Commissioner is contrary to the **WHSCA**, or is outside the jurisdiction of the Review Board, they may seek a judicial review of the decision by filing an Originating Application with the Trial Division of the Supreme Court of Newfoundland and Labrador.

A party has the right to proceed with a judicial review without going through the reconsideration process. For assistance in initiating a judicial review, please contact the Supreme Court of Newfoundland and Labrador.

8.00 Forms

WCIRB forms can be found online at www.gov.nl.ca/wcirb/forms-and-applications, in-person at WCIRB's Mount Pearl office, or can be sent by postal mail upon request.

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