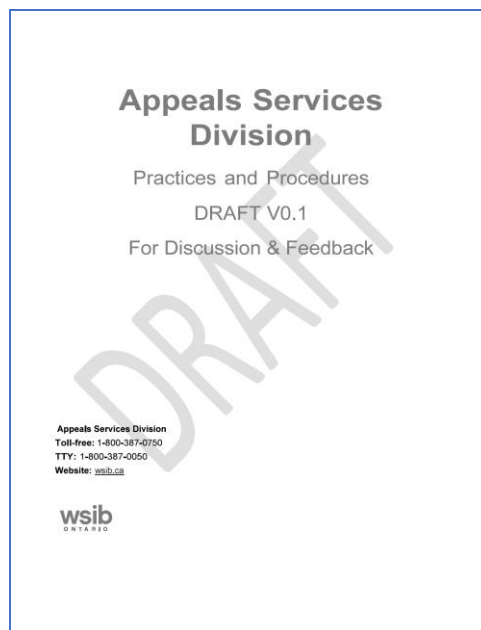

**Comment with respect to the Appeals
Services Division Practices and
Procedures document DRAFT VO. 1**



**Comment developed
by L.A. Liversidge, LL.B.
June 21, 2023**

Comment with respect to the Appeals Services Division Practices and Procedures document DRAFT VO. 1

Introduction

1. Thank you for forwarding the **Appeals Services Division, Practices and Procedures, DRAFT Vo. 1** (“Draft P&P”) for comment and opinion.
2. I have carefully reviewed the Draft P&P and have contrasted the proposed document with the current **ASD P&P (July 09, 2020)** (“2020 version”).

Draft P&P superior to current ASD P&P

3. Overall, the Draft P&P is quite superior to the 2020 version.
4. I offer no criticisms or suggestions for improvement, with the exception of one strong suggestion set out later pertaining to the use of definitional language.
5. The Draft P&P requires no revision and is satisfactory as drafted, with the exception I will later note.

Suggested timetable for first two reviews/revisions

6. I trust that as has been the case, and as set out in the Draft P&P at page 2, the document will be regularly reviewed and periodically revised.
7. I suggest that the first and second updates be scheduled for six (6) months and twelve (12) months post-implementation in the event any “bugs” are identified in the earlier period of operation.
8. Moreover, as the KPMG VFMA consultation is concurrently underway and as change will be implemented as a result of that review, this timetable should assist in codifying procedural adjustments arising from that procedural reform.
9. As I see no need for change to the Draft P&P (with the one exception later addressed), I will offer comment only with respect to certain notable adjustments.

Format superior

10. The overall format and presentation is quite superior to the 2020 version. The table of contents (TOC) is excellent as in the use of hyperlinks (which were also present in the 2020 version). One suggestion: As one must hover over the TOC item to notice the hyperlink, I suggest that for the “Practice Guideline” heading hyperlink that it be formatted in **blue** similar to the page number references under “Key Changes.”

11. The utilization of descriptor language similar to the WSIAT is very positive, i.e., WSIAT “Practice Direction” and WSIB “Practice Guideline.” This is a major improvement that enhances readability and establishes linked descriptors between WSIB and WSIAT. Wherever possible, the vocabulary should be the same between the two institutions.

Problem: Vocabulary and terms

12. With respect to vocabulary, the document utilizes the term “**injured/ill person**” throughout. This is similar but not identical to terminology deployed in the concurrently released “[Dispute resolution and appeals process value-for-money audit consultation](#),” which uses the term “**person with an injury**.” Both documents are contextually referring to the same “person.”
13. I will explain why neither term should be deployed in either document or any similar WSIB document. I will set out what the proper terminology should be and strongly urge the Board to **purge those terms in both documents and replace them with more suitable descriptors**, a list of which I will present.
14. In a legal context and in legal writings, the term “injured person” has specific meanings. This is especially the case dealing with matters under the *Workplace Safety and Insurance Act* (“WSIA”) as “injury” sustained in employment is a predicate condition for entitlement.
15. In the context of a document which is setting out the practices and procedures for an appeal under the auspices of the WSIA, quite often the very matter under consideration is whether or not the individual is in fact an “injured/ill person” or a “person with an injury.” The entire proceeding will not be about whether or not the individual is a “person” of course, but may very well be, **and quite often is**, about whether or not there is an illness or an injury (WSIA, ss. 13 and 15).
16. One need not be an established “injured/ill person” or a “person with an injury” to submit a claim to the WSIB, or pursue an appeal within the WSIB, as that is a finding of fact to be determined by the Board itself.
17. As mentioned, the very nature of the proceeding may well be whether or not the individual is in fact an “injured or ill person” or a “person with an injury.” As is common, often the determination of the Board may well be that the person is not, in fact, an “injured/ill person” or a “person with an injury.” The Draft P&P use of these terms actually permits the construction of this absurd sentence, “*The injured/ill person who submitted the appeal was found after due consideration of all of the evidence not to be an injured/ill person.*” This playfully constructed sentence illustrates the absurdity.
18. Neither term “injured/ill person” or “person with an injury” appears within the WSIA. However, the WSIA does set out and define relevant and legally important terms that actually describe the same “person” attempted by the Draft P&P (and the Dispute Resolution Consultation Document).
19. The WSIA defines the terms worker, dependant, employer, guardian, learner, spouse, student, all of whom may possess claim and appeal rights, with some ironically excluded by the term “injured/ill person” or “person with an injury.”

20. For the intended purposes of the Draft P&P (and the Dispute Resolution Consultation Document), the Board should limit itself to the terms “appellant” and “respondent” or “party” or collectively “parties.”
21. I encourage the Board to seek guidance from the WSIAT webpage “[Terms We Use](#)” which defines the terms as follows:
- Appellant:** An appellant is the person who makes the appeal to the WSIAT.
- Party:** A party is worker or employer who has decided to become involved in an appeal. Usually, only people who may be affected by how the appeal is decided can become involved. No one has to take part in an appeal if they do not want to, but the WSIAT can still decide the appeal.
- Respondent:** A person who starts an appeal at the WSIAT is called the appellant. The other person or people involved in the appeal are called respondents. For example, when a worker starts an appeal, the employer is usually the respondent. When an employer starts an appeal, the worker is usually the respondent.
22. While not a part of this immediate exercise, if it is the case that these terms have permeated beyond the two documents referenced and appear in other WSIB policy and procedure documents, my recommendation applies equally to those documents.

Respectfully submitted,

L.A. Liversidge
June 21, 2023