

Practice Directive 1-94.1-1 (A)

Representatives

Effective 31 December 2003

Reference Section 94.1 of the *Workers Compensation Act* (the “Act”):

94.1 (1) A person may

- (a) give advice respecting the interpretation or administration of the Act, the policies of the board of directors, the Board’s practices and procedures or any regulations, orders or decisions under the Act, or*
 - (b) act on behalf of a person*
 - (i) by communicating with the Board, an officer or employee of the Board, the appeal tribunal or any other person acting under this Act, or*
 - (ii) by appearing before the Board, an officer or employee of the Board or the appeal tribunal.*
- (2) Section 15 of the Legal Profession Act does not apply to a person while the person performs the functions referred to in subsection (1).*

Practice

OVERVIEW

Section 94.1(1)(b) of the *Act* authorizes a person (the “Representative”) acting on behalf of a principal – an employer, independent operator, or other client of the Board – to communicate with and appear before the Board or an officer of the Board. A Representative may be a ‘professional’ such as an accountant, or a layperson. Section 94.1(2) negates the proscription under section 15 of the *Legal Profession Act* that a representative – other than a lawyer – cannot undertake the “practice of law”, i.e. the provision of legal services for a fee, gain, or reward.

NOTICE OF REPRESENTATION

The Finance Division will not recognise the existence of a representation or agency relationship until it is in receipt of the principal’s written direction confirming the existence and the extent of the relationship. Such written direction may be provided to the Finance Division on either the Board or the Workers’ Compensation Appeal Tribunal’s *Authorization of Representative* form or by letter providing the same information as on the *Authorization of Representative* form.

A principal’s written direction is not required for:

- (a) inquiry from or representation by a member of the Legislature of the Province of British Columbia, the Ombudsman, an Employers' Adviser, a Workers' Adviser, the principal's lawyer or accountant;¹ or
- (b) application for or cancellation of Personal Optional Protection per *Assessment Policy 1-2-3*, if made by a "member of the individual's [principal's] immediate family, the individual's accountant or lawyer, or in the case of a partnership, a partner".

PRESUMPTIONS

It is the obligation of the principal to unequivocally define or state:

- (a) The scope of the representation; and, absent exceptional circumstances, the Finance Division will deem the scope of the representation to be limited to the initial issue or matter addressed.
- (b) The extent of the authority granted the Representative; and, absent an explicit limitation on the grant of authority, the Finance Division will presume the Representative has authority to bind the principal to an agreement or expense.
- (c) Whether the authorization is to co-exist with or supersede any prior authorization to another representative; and, in default of such information, the Finance Division will deem a later authorization to supersede any prior authorization to another representative. It is the principal's obligation to inform a prior representative that authorization has been revoked.
- (d) The termination date of the grant of authority, which cannot be greater than two years from the date of execution.

A written authorization for representation that pre-dates this Practice Directive will not be accepted by the Finance Division as valid and subsisting authority after 31 December 2004.

DISCLOSURE

Absent exceptional circumstances, the Finance Division will not provide any document or information to a Representative that it has provided to the principal in the current or preceding twenty-three months.

¹ *Assessment Policy 1-95-1(b)* states, in part:

The Board will generally accept the verbal advice of lawyers, accountants or similarly accredited professionals that they represent an employer or independent operator and are authorized to obtain information about the employer or independent operator.

REPRESENTATIVE'S CONDUCT

It is recognised that the Board is a quasi-judicial tribunal and therefore a Representative acting before the Board has a duty to serve the cause of justice, be faithful to clients, be candid and courteous in relations with Board staff, and demonstrate personal integrity.

In order to safeguard the interests of the Board's clients and the authority and dignity of the Board, the Board has promulgated the *Standards of Conduct for Practice and Procedure before the WCB*, which is attached as Schedule "A" to this Practice Directive.

BREACH OF STANDARDS OF CONDUCT

If a Board officer or employee is of the opinion that a Representative may have contravened the *Standards of Conduct for Practice and Procedure before the WCB*, the officer or employee may immediately deal with the issue (e.g. terminate the conversation, end the meeting, suspend the review) and may require future communication on the matter to be in writing only. All details must be recorded in writing and referred to a departmental manager.

In appropriate circumstances, the manager may communicate with the Representative in a suitable manner. For example, if this is the Representative's first violation, or the Representative's actions are not serious, or it is felt that a telephone call or letter will produce the desired change in the Representative's behaviour, these options may be used.

If the manager determines the matter should be pursued further, the manager will refer the matter to the departmental Director who may communicate the Division's concerns to the Representative as the Director deems appropriate or refer the matter to the Divisional Vice-President for a formal determination.

After providing the Representative with an opportunity to be heard, the Divisional Vice-President will determine whether the Representative has violated the *Standards of Conduct* and, if so, whether or not to restrict or deny the Representative's rights of representation on such terms or conditions as the Vice-President decides. The Vice-President's decision will be communicated to the Representative in writing.

All documentation relating to the incident or the Representative's conduct will be sent to a central file in the office of the President.

SCHEDULE "A"

STANDARDS OF CONDUCT FOR PRACTICE AND PROCEDURE BEFORE THE WCB

These Standards of Conduct apply to Representatives who appear before the Workers' Compensation Board of British Columbia (WCB):

- (a) The conduct of a Representative must be of the highest moral and ethical standard in keeping with the responsibility and trust placed with them by their clients and the importance of their function. This conduct includes unfailing honesty. The Representative will not put forward any information known to be untrue, nor will he or she knowingly assist or encourage a party to be dishonest or misrepresent facts.
- (b) The conduct of a Representative must demonstrate a high degree of courtesy and respect to other parties and their representatives, witness(es), and WCB staff.
- (c) A Representative must be prepared. This includes being familiar with their client's WCB claim, prevention or assessment file and the relevant law and policy. This also includes consulting with the client before making representations to the WCB on the client's behalf and being in a position to attend at the WCB as requested and/or provide written submissions on a timely basis.
- (d) A Representative must observe the WCB's practices and procedures in relation to attendance either at the WCB or outside the WCB on matters involving the client including meetings, hearings, medical assessments, and work assessments/ evaluations.
- (e) A Representative will instruct his or her client and witnesses on the appropriate conduct in relation to WCB attendance, and the requirement for courtesy and respect to WCB staff as well as to any parties and opposing representatives. A Representative is expected to take whatever steps are necessary to prevent clients and witnesses from disrupting WCB-related proceedings. A Representative is held responsible for the conduct of their client.
- (f) Any public statements that are made by the Representative on behalf of the client should be factual and fair and never involve personal attacks on WCB staff or other parties to a hearing.
- (g) A Representative will maintain and protect the confidentiality of information disclosed during WCB proceedings and must not use that information for other purposes without prior consent.

A breach of these standards may result in a Representative's right of representation being restricted or denied. A Representative who is abusive to WCB staff may have his or her access to WCB staff restricted. Further, the impugned conduct may be brought to the attention of the governing body of the Representative.