

## Board Appeal Tribunal – Legal Actions

The workers' compensation system is based on the Meredith Principles, which provide for a no-fault compensation system. Under this system, workers receive the security of benefits for work injuries, and workers and employers waive the right to sue. As a result of this historical trade-off, certain actions related to work injuries are barred.

Section 169 of [The Workers' Compensation Act, 2013](#) (the Act) allows any party to an action to apply to the Board to determine any right to compensation and whether or not any action for a work injury is barred by the Act. The term "action" has been interpreted as being broad enough to include a grievance related to a work injury. The Board has exclusive jurisdiction to determine such questions. The Board's decision is final and binding on all parties.

### Applications to the Board

The court action or grievance must have been commenced before an application can be brought to the Board pursuant to section 169 and any party to the action can apply for a ruling. Applications related to court actions must include copies of all pleadings, including where applicable, the Statement of Claim and all Statements of Defense. Applications related to a grievance should include a copy of the Grievance Report, copies of all relevant sections of the Collective Bargaining Agreement and copies of any relevant arbitration awards.

You should notify the other parties of your application and provide them with copies of your submission to the Board. Although submissions may contain references to legal precedent, they should not refer to previous decisions of the Board that have not been reviewed by the Court. The Board is not bound by such precedent and considers unreported Board decisions to be confidential. The Board will write to the other parties and request their submissions.

When all submissions have been received, the Board will determine if an oral hearing is required and advise the parties how it intends to proceed.

### Hearings

The Board follows an inquiry model, which means that it is not bound by the rules of evidence. It may make inquiries on any matters that it determines necessary. A court reporter will record the hearing. Parties who wish to receive a copy of the transcript may purchase one from the court reporter.

At the start of a hearing with multiple presenters, the Board Chair will advise the parties of the presentation order.

### Decisions

Copies of the Board's decision will be mailed to all parties. If the Board does require more information before making a decision, all parties will be told of the results. All parties will then be invited to make further submissions related to that additional information before the Board makes its final decision.



**Consideration**

In determining section 169 applications, the Board considers the five questions set out in *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890, namely:

- Is the Plaintiff an employer, a worker or any dependant of a worker within the meaning of the Act?
- If so, was the injury sustained in the course of his or her employment?
- Is the defendant an employer or a worker within the meaning of the Act?
- If the defendant is an employer or a worker within the meaning of the Act, does the claim arise out of the acts or defaults of an employer or a worker, while engaged in, about or in connection with the industry or employment in which the employer or worker causing the injury was engaged?
- Is the action for a work injury?

Submissions should address these questions in the context of the action that is the subject of the application.

**Costs**

The Board does not award costs to any parties or pay any expenses related to the parties' section 169 applications or submissions.