

Tribunal Practices and Procedures

Introduction

The *Employment and Assistance Act* section 20(2) allows the Tribunal Chair to establish practices and procedures for the Tribunal that are consistent with the *Employment and Assistance Regulation*.

Following are the Practices and Procedures for the Employment and Assistance Appeal Tribunal as established by the Tribunal Chair. These Practices and Procedures are to be followed during the appeal process subject

to any circumstances that justify a departure from these requirements. Any question of procedure that arises during a hearing and is not provided for in these Practices and Procedures will be decided by the Panel Chair (*Employment and Assistance Act* section 22(6)).

These Practices and Procedures may be amended from time to time and as required by the Tribunal Chair.

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1.0 Glossary

appeal record Initially, the appeal record for the Tribunal consists of the Notice of Appeal and the record of the ministry decision. As the appeal progresses, it also includes submissions, any additional information admitted into evidence at the hearing, and the Tribunal decision.

appellant a person who commences an appeal under section 21 of the *Employment and Assistance Act*

business day a day other than Saturday, Sunday, or a statutory holiday

independent the activities of the Tribunal are separate and operate at “arms length” from both ministries

members a member of the Tribunal appointed by the Minister of Social Development and Poverty Reduction under section 19(2) of the Act

minister the Minister of Social Development and Poverty Reduction or the Minister of Children and Family Development, depending on context

ministry the Ministry of Social Development and Poverty Reduction or the Ministry of Children and Family Development, depending on context

notice of appeal the appeal form specified by the Minister of Social Development and Poverty Reduction that must be submitted to the Tribunal in order to commence an appeal

oral hearing a hearing that is conducted with the parties present in person, by teleconference, or by video conferencing

panel the member(s) designated by the Tribunal Chair under section 22(1) of the Act to hear an appeal

panel chair the chair of a panel designated under section 22(2) of the Act

party in relation to an appeal to the Tribunal, the appellant and the ministry, whose decision is under appeal

reconsideration decision the final ministry decision pertaining to the initial request and the decision that may be appealed to the Tribunal

record of the ministry decision the information and records that were before the minister when the reconsideration decision under appeal was made

representative an agent, lawyer, or advocate representing a party during an appeal

tribunal the Employment and Assistance Appeal Tribunal established under section 19(1) of the *Employment and Assistance Act*

tribunal chair the Chair of the Tribunal appointed under section 19(2)(a) of the *Employment and Assistance Act*

witness a person who provides oral evidence at a hearing

written hearing a hearing that is conducted through the submission of written evidence and written argument

2.0 Communicating with the Tribunal

2.1 Dealing with the Tribunal Office

- (a) An appellant does not require representation at an appeal but may have someone represent them.
- (b) In order for the Tribunal to communicate with an appellant's representative, the appellant must deliver to the Tribunal a completed Release of Information form.

2.2 Representation at Hearing

- (a) In order for a panel to accept an appellant's representative at the hearing, the appellant must provide verbal authorization at the hearing, or
- (b) If the appellant will not be attending the hearing, the appellant must deliver to the Tribunal a completed Release of Information form in advance of the hearing.

2.3 Address for Delivery

- (a) Appellant
 - i. Every appellant must provide an address for delivery to the Tribunal on the Notice of Appeal.
 - If the appellant does not provide an address for delivery, the Tribunal will attempt to contact the appellant to determine the appellant's address for delivery.
 - If the Tribunal cannot contact the appellant, the Tribunal will use the appellant's address on the reconsideration decision as the appellant's address for delivery.
 - ii. The Tribunal will deliver information to the appellant at the appellant's address for delivery.
 - iii. If an appellant's address for delivery changes during the appeal process, the appellant must promptly notify the Tribunal of the change.
 - iv. Information delivered by the Tribunal to the appellant's address for delivery will be treated as having been delivered to the appellant.
- (b) Ministry of Social Development and Poverty Reduction
 - i. The Tribunal will deliver information to the designated Ministry of Social Development and Poverty Reduction representative.
- (c) Ministry of Children and Family Development
 - i. The Tribunal will deliver information to the designated Ministry of Children and Family Development representative.

2.4 Tribunal Hours

- (a) A party or a representative may communicate with the Tribunal between 8:30 am to 4:30 pm on business days.

3.0 The Appeal Process

3.1 Commencing an Appeal

- (a) An appellant must commence an appeal by delivering a Notice of Appeal to the Tribunal Chair within seven (7) business days of receipt of the minister's reconsideration decision (*Employment and Assistance Act* section 21(1) and *Employment and Assistance Regulation* section 84). Notices of Appeal should be sent electronically, by mail or fax.
- (b) An appellant must indicate the date of receipt of the minister's reconsideration decision on the Notice of Appeal and this date will be accepted by the Tribunal unless there is evidence to contradict it.
- (c) In order to determine if an appeal is commenced within seven (7) business days the Tribunal will consider the postmark or fax date of the Notice of Appeal.

3.2 Screening of Appeals

- (a) When the Tribunal receives a Notice of Appeal, it will be screened to determine whether:
 - i. It complies with the specified form
 - ii. It is submitted within the required time limit and,
 - iii. The Tribunal has jurisdiction over the appeal.
- (b) Notice of Appeal That Does Not Comply with the Specified Form
 - i. If the Notice of Appeal is not complete, the Tribunal will return the Notice of Appeal to the appellant, indicate what information is missing and require that the form be completed and returned to the Tribunal within a specific time period.
 - ii. If the Notice of Appeal is not returned to the Tribunal with the requested information within the specified time period, the appellant's appeal will be considered abandoned and the Tribunal will notify the parties in writing accordingly.
- (c) Notice of Appeal Received Outside Time Limit
 - i. If a Notice of Appeal is received by the Tribunal after the legislated time limit has expired, the party seeking to appeal will be deemed to have accepted the minister's reconsideration decision and the Tribunal will notify the parties in writing.

3.0 The Appeal Process (con't)

- (d) Notice of Appeal Relating to Matters outside the Tribunal's Jurisdiction
 - i. If the appeal relates to a matter that appears to be outside the jurisdiction of the Tribunal, at the discretion of the Tribunal Chair, the parties may be invited to make submissions on whether the Tribunal has the jurisdiction to hear the appeal or the Tribunal Chair will proceed to make a decision on whether the matter falls outside of the jurisdiction of the Tribunal. The Tribunal will notify the parties in writing of the decision.

3.3 Appeal Record

- (a) Upon receipt of a completed Notice of Appeal, the Tribunal will ask the ministry to provide the record of the ministry decision.
- (b) The Tribunal will produce copies of the appeal record and deliver a copy to every party to the appeal and with the appellant's consent to the appellant's representative.
- (c) The Tribunal will deliver a copy of any submission pertaining to an appeal to every party to the appeal and with the appellant's consent to the appellant's representative.

3.4 Appointment of Panel

- (a) The Tribunal Chair will appoint a panel of up to three members to hear the appeal (*Employment and Assistance Act* section 22(1)) and will provide each member of the panel with a copy of the appeal record.

3.5 Consolidation of Appeals Involving the Same Parties

- (a) The Tribunal Chair may consolidate two or more appeals involving the same parties if the appeals involve substantially similar facts and each party consents to the consolidation (*Employment and Assistance Regulation* section 86(e)).
- (b) In the event of a consolidation, only one hearing will occur.

3.6 Hearing of Appeals Involving Different Parties Together

- (a) The Tribunal Chair may direct that two or more appeals involving different parties be heard together if the appeals involve substantially similar facts and each party agrees to the appeals being heard together (*Employment and Assistance Regulation* section 86(e)).

4.0 Hearings

4.1 Type of Hearing

- (a) Hearings may occur by any of the following means:
 - i. orally
 - in person
 - by teleconference; or
 - ii. in writing.
- (b) If the appellant indicates a preference for hearing type on the Notice of Appeal, the Tribunal will attempt to accommodate the request.
- (c) If the appellant does not indicate a preference for hearing type, the hearing will proceed as an oral hearing by teleconference.
- (d) If the appellant indicates a preference for a written hearing, the hearing will proceed as a written hearing as the ministry, as a party to the appeal, has provided consent to conduct written hearings (*Employment and Assistance Act* section 22(3)) in every case.
- (e) A subsequent request for a change in the type of hearing will only be considered in exceptional circumstances. As soon as possible, requests to change the type of hearing must be made in writing and indicate the reason for the request. The decision whether to allow the change will be made by the Tribunal Chair and the Tribunal will notify the parties in writing accordingly.
- (f) A request to attend an in person hearing by telephone will only be considered in exceptional circumstances. The party must deliver to the Tribunal a completed Request to Attend an In Person Hearing by Telephone form and provide reasons for the request. The decision whether to approve the request will be made by the Tribunal Chair and the Tribunal will notify the parties in writing accordingly.

4.2 Notice of Hearing

- (a) The Tribunal will notify the parties of the date, time and place of a hearing at least two business days before the hearing is to commence (*Employment and Assistance Regulation* section 85(2))
- (b) The Tribunal will provide notification of the hearing to the appellant at the appellant's address for delivery.

4.0 Hearings (con't)

4.3 Hearing Date

- (a) Hearings will commence within 15 business days of receipt of the completed Notice of Appeal by the Tribunal unless the parties and the Tribunal Chair consent to a later date (Employment and Assistance Regulation section 85(1)).

4.4 Adjournments

- (a) If a party requests an adjournment more than one (1) business day prior to the hearing, the party must obtain the written consent of the other party and the Tribunal Chair. The party requesting an adjournment must deliver to the Tribunal a completed Appeal Adjournment Request form including reasons for the request. The Tribunal will notify the parties in writing of the Tribunal Chair's decision.
- (b) If the other party or the Tribunal Chair does not consent to the request for an adjournment, the hearing will not be adjourned.
- (c) If a party requests an adjournment within one (1) business day prior to the hearing, the party must make the request to the panel at the hearing either by telephone or in person and may make that request even though a prior request was not consented to.
- (d) At the hearing either by telephone, in person or in writing, the Panel Chair may adjourn the hearing, at the request of either party or on the Panel Chair's own motion, where the Panel Chair determines that an adjournment is required to permit an adequate hearing to be held.

4.5 Absence of Panel Member(s)

- (a) If a member of the panel has been prevented from attending a hearing, the Tribunal Chair will determine if the hearing will proceed or be rescheduled.

5.0 Hearing Procedure

5.1 General

- (a) Appeal proceedings before a panel are confidential and are closed to the public (Employment and Assistance Regulation section 88(3)).
- (b) A panel may admit as evidence the record of the ministry decision and any other evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal (*Employment and Assistance Act* section 22(4)).

5.2 Oral Hearing Procedure

- (a) Location of Hearing
 - i. In-person hearings will be held in or near the appellant's community whenever possible, but will not be held in an office of the ministry whose decision is under appeal.
- (b) Presentation of Each Party's Case
 - i. At a hearing each party will have the right to present evidence and make arguments in support of that party's case.
 - ii. The appellant will present evidence and make arguments first, followed by the ministry.
- (c) Witnesses
 - i. Each party may call witnesses to give evidence before the panel (Employment and Assistance Regulation section 86(c)).
 - ii. A witness may not be present at the hearing before giving evidence unless the witness is:
 - an expert witness in the proceedings;
 - a party to the appeal; or
 - a representative of a party to the appeal (Employment and Assistance Regulation section 86(d)).
- (d) Observers
 - i. A party may bring an observer to the hearing only with the permission of the other party.
 - ii. If the other party is unable to provide permission as they are not in attendance at the hearing or refuse to give permission for an observer to attend, the observer may not attend.
 - iii. The Tribunal Chair may attend a hearing as an observer, either in person or by telephone and can do so without the permission of the other parties.

5.0 Hearing Procedure (con't)

(e) Proceeding in the Absence of a Party

- i. If a party does not appear at an oral hearing, the panel may proceed in the absence of the party if the party was notified of the hearing (Employment and Assistance Regulation section 86(b)).
- ii. Prior to proceeding, the panel must first determine whether the absent party received notification of the date, time and place of the hearing at least 2 business days before the hearing date by examining either the fax confirmation of the Notice of Hearing sent to the ministry, or the Canada Post tracking sheet showing successful delivery of the Notice of Hearing sent to the appellant by registered mail.
- iii. If the notice requirement was not met, the hearing cannot proceed and the panel chair must contact the Tribunal to have the hearing rescheduled.

(f) Recording

- i. Hearings will not be recorded by the Tribunal.
- ii. Recording of hearings by a party, advocate, agent, legal counsel or any other person attending is not permitted.

(g) Oaths

- i. Witnesses (including parties) are not required to give evidence under oath.

(h) Additional Documentation

- i. Any party wishing to provide the Tribunal with additional documentation not included in the appeal record should provide it to the Tribunal at least three (3) business days before the hearing date. The Tribunal will distribute the documentation to the other party and the panel.
- ii. If the party is unable to provide the additional documentation to the Tribunal at least 3 business days prior to the hearing, the party may provide it to the panel at the hearing. The party should bring copies of the additional documentation for the panel members and the other party.
- iii. If the additional documentation brought to the hearing is substantive or voluminous, the other party may request an adjournment from the panel.

5.3 Written Hearing Procedure

(a) Commencement of Written Hearing

- i. The written hearing process commences with the issuance of a letter from the Tribunal to the parties establishing a submissions schedule.

5.0 Hearing Procedure (con't)

(b) Presentation of Each Party's Case in a Written Hearing

- i. Each party will be provided an opportunity to provide written submissions to support their case.
- ii. The appellant will be given seven (7) business days to provide a written submission.
- iii. Upon receipt of the appellant's submission, the Tribunal will forward it to the ministry who will be given seven (7) business days in which to provide a response.
- iv. If no submission is received by a party within the time established in the submissions schedule, it will be assumed that the party declined the opportunity to provide a submission.

(c) Extension of Time

- i. If a party wishes to request an extension of the time established by the submissions schedule, the request must be in writing to the Tribunal in advance of the date on which the submission is due.
- ii. The party must obtain the written consent of the other party and the Tribunal Chair. The party requesting an extension must deliver to the Tribunal a completed Written Submission Extension Request form including reasons for the request. The Tribunal will notify the parties in writing of the Tribunal Chair's decision.
- iii. If the other party or the Tribunal Chair does not consent to the request for an extension, The Tribunal will notify the parties in writing and the submission schedule will not be changed.

(d) Written Submissions

- i. Following receipt of any written submissions from the parties, the Tribunal will forward the appeal record, which includes the written submissions, to the panel for review.
- ii. If no written submissions are received from the parties, the Tribunal will forward the existing appeal record to the panel for review.
- iii. Any submission received after the date it was due but before the panel has rendered its decision, will be forwarded to the panel chair and the panel chair will decide whether or not to accept the late submission. If a panel has not been appointed, the Tribunal Chair will decide whether or not to accept the late submission.
- iv. The Tribunal will issue a decision in writing to the parties and if the submission is accepted, the other party will be given seven (7) business days to provide a response.

6.0 Dismissal of Appeals

6.1 Dismissals

- (a) Dismissal of an appeal may occur at any time before a panel has rendered its decision if the Tribunal receives a completed Consent to Dismiss form where both parties consent to the dismissal (*Employment and Assistance Act* section 23).
- (b) The dismissal of an appeal means that no decision on that appeal will be made by the panel. The Tribunal will notify the parties in writing accordingly.

7.0 Decisions of a Panel

7.1 General

- (a) The decision of a majority of the members of a panel is the decision of the Tribunal, but the decision of the chair of the panel governs in the case of a tie. (*Employment and Assistance Act* section 24(5)).
- (b) Decisions of a panel must be made in writing and shall not be given orally.
- (c) Panels must provide the Tribunal with their written decision within five (5) business days of the conclusion of the hearing unless the Tribunal Chair has extended the time by up to 10 additional business days.
- (d) Decisions of a panel will either confirm or rescind the ministry's reconsideration decision.
- (e) Decisions rescinding the ministry's reconsideration decision will be referred back to the ministry if a further decision as to amount is required.
- (f) Decisions of a panel will be mailed to the parties by the Tribunal within five (5) business days of the Tribunal's receipt of the decision from the panel (*Employment and Assistance Regulation* section 87(6)).
- (g) Decisions of a panel will not be provided by the Tribunal over the telephone.

8.0 Miscellaneous

8.1 Freedom of Information and Protection of Privacy Act

- (a) The Tribunal is subject to the *Freedom of Information and Protection of Privacy Act* (FOIPPA).
- (b) Section 61 of the *Administrative Tribunals Act* states that FOIPPA does not apply to any of the following:
 - i. a personal note, communication or draft decision of a decision maker;
 - ii. notes or records kept by a person appointed by the tribunal to conduct a facilitated settlement process in relation to an application;
 - iii. any information received by the Tribunal in a hearing or part of a hearing from which the public, a party or an intervener was excluded;
 - iv. a transcription or tape recording of a tribunal proceeding;
 - v. a document submitted in a hearing for which public access is provided by the Tribunal; and
 - vi. a decision of the Tribunal for which public access is provided by the Tribunal.