

EMPLOYMENT AND ASSISTANCE APPEAL TRIBUNAL

PRACTICES AND PROCEDURES

June 2009

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 Regulations.

The 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. 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 DEFINITIONS

“appeal record” means the Notice of Appeal and record of the ministry decision. As the appeal progresses, it also includes submissions, any new information admitted into evidence at the hearing, and the Tribunal decision;

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

“business day” means a day between the hours of 8:30 am and 4:30 pm other than Saturday, Sunday, or a statutory holiday;

“minister” means the Minister of Housing and Social Development or the Minister of Children and Family Development, depending on context;

“ministry” means the Ministry of Housing and Social Development or the Ministry of Children and Family Development, depending on context;

“Notice of Appeal” means the appeal form specified by the minister that must be submitted to the Tribunal in order to commence an appeal;

“oral hearing” means a hearing that is conducted in the presence of the parties and the panel members or by teleconference;

“**panel**” means the member(s) designated by the Tribunal Chair under section 22(1) of the *Employment and Assistance Act* to hear an appeal;

“**panel chair**” means the chair of a panel designated under section 22(2) of the *Employment and Assistance Act*;

“**party**” means, in relation to an appeal to the Tribunal, the appellant and/or the minister whose decision is under appeal;

“**record of the ministry decision**” means the information and records that were before the minister when the reconsideration decision under appeal was made;

“**reconsideration decision**” means the final ministry decision pertaining to the initial request and is the decision appealed to the Employment and Assistance Appeal Tribunal;

“**representative**” means an agent, lawyer, or advocate representing a party during an appeal;

“**Tribunal**” means the Employment and Assistance Appeal Tribunal established under s. 19(1) of the *Employment and Assistance Act*;

“**Tribunal Chair**” means the chair of the Tribunal appointed under section 19(2)(a) of the *Employment and Assistance Act*;

“**witness**” means a person who provides evidence at a hearing;

“**written hearing**” means 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 to conduct 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 Before the Panel

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

2.3 Address for Delivery

- (a) Appellant
 - (i) Every appellant must provide an address for delivery to the Tribunal on the Notice of Appeal.
 - (ii) The Tribunal will deliver information to the appellant at the address for delivery provided by the appellant.
 - (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 address for delivery provided by the appellant will be treated as having been delivered to the appellant.
- (b) Ministry of Housing and Social Development
 - (i) The Tribunal will deliver information to the designated Ministry of Housing and Social Development representative.
- (c) Ministry of Children and Family Development
 - (ii) 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 weekdays, excluding holidays. The Tribunal will treat any communication received after 4:30 pm as if received the next business day.

- (b) The Tribunal will deliver a copy of a submission pertaining to an appeal to every party to the appeal.

3.0 THE APPEAL PROCESS

3.1 Commencing an Appeal

- (a) An appellant must commence an appeal by delivering a Notice of Appeal in the specified form 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 by mail or fax to the Tribunal.
- (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 does not comply with the specified form, the Tribunal will return the Notice of Appeal to the appellant, indicate what information is missing, and require that information to be provided and returned to the Tribunal by the appellant within a specific time period.

- (ii) If the Notice of Appeal is not provided and returned to the Tribunal with the requested information within the specified time period, the appellant is deemed to have accepted the minister's reconsideration decision 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 required 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.
- (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, the Tribunal will notify the parties in writing.
 - (ii) The Tribunal may invite the parties to make submissions on the Tribunal's jurisdiction. The Tribunal Chair will then determine, based on any submissions received, if the Tribunal has jurisdiction over the appeal and will notify the parties in writing of the decision.

3.3 Appeal Record

- (a) Upon receipt of a completed Notice of Appeal in the specified form, the Tribunal will ask the ministry to provide it with the record of the ministry decision.
- (b) The Tribunal will produce copies of the appeal record, number the pages, and will deliver a copy to every party to the appeal and, with the appellant's consent, to the appellant's representative.

3.4 Appointment of Panel

- (a) If a completed Notice of Appeal is filed in the specified form and within the required time limits, the Tribunal Chair will, subject to paragraph (b), appoint a panel of 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.

- (b) The Tribunal may convene a panel of less than three members with the appellant's consent.

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 of the parties provides consent 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 of the parties 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) Oral hearing – in person;
 - (ii) Oral hearing – by teleconference; or
 - (iii) Written hearing.
- (b) If the appellant indicates a preference for an oral hearing on the Notice of Appeal, the hearing will proceed as an oral hearing. The Tribunal will attempt to arrange the type of oral hearing requested by the appellant and this will depend on the availability of resources.

- (c) If the appellant does not indicate a preference for the type of hearing, or indicates a preference for more than one method of hearing, the hearing will proceed as an oral hearing.
- (d) If a party indicates a preference for a written hearing, the Tribunal will seek the consent of the other party. If consent is provided, the hearing will proceed in writing (*Employment and Assistance Act* section 22(3)). If one of the parties does not consent, the hearing will proceed orally.
- (e) A subsequent request for a change in the type of hearing will only be considered in exceptional circumstances. Requests to change the type of hearing must be made in writing as soon as possible and indicate the reason for the request. The decision whether to allow the change will be made by the Tribunal Chair.

4.2 Notice of Hearing

- (a) The Tribunal will notify the parties of the date, time and place of a hearing at least two (2) 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 address for delivery provided by the appellant on the Notice of Appeal.

4.3 Hearing Date

- (a) Hearings will commence within 15 business days after the completed Notice of Appeal in the specified form has been delivered to 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 commencement of 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.

- (b) If the Tribunal Chair or the other party 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 request must be made to the panel at the hearing and may be made notwithstanding that a prior request was not consented to.

4.5 Absence of Panel Member(s)

- (a) If any of the appointed panel members have been prevented from attending the hearing and
 - (i) the appellant previously consented to a panel of less than three members, the panel will proceed with the hearing; or
 - (ii) the appellant did not previously consent to a panel of less than three members, the appellant will be given the choice:
 - (A) to proceed with the hearing at the scheduled time before a panel of less than three members; or
 - (B) to proceed with the hearing as soon as possible before a panel of three members.
- (b) If the appellant chooses (a)(ii)(B), and the Tribunal cannot arrange for alternative panel member(s) to attend the scheduled hearing, the hearing will be adjourned.
- (c) The panel chair will immediately notify the Tribunal of any adjournment.

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 only admit as evidence the record of the ministry decision and oral or written testimony in support of it (*Employment and Assistance Act* section 22(4)).

5.2 Oral Hearing Procedure

- (a) Location of Oral Hearing – In-Person
- (i) In-person hearings will be held in a location within reasonable distance of the appellant 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 in an Oral Hearing
- (i) In an oral hearing each party will have the right to present evidence and make arguments in support of that party’s case.
- (ii) The appellant will have the opportunity to 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 will be asked to wait outside of the hearing room 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) 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 panel chair will adjourn the hearing.
- (e) Recording
 - (i) Hearings will not be recorded by the Tribunal.
 - (ii) Taping of hearings by a party, advocate, agent, legal counsel or any other person attending is not permitted.
- (f) Oaths
 - (i) Witnesses (including parties) are not required to give evidence under oath.
- (g) Additional Documentation
 - (i) Any party wishing to provide the Tribunal with additional documentation not included in the appeal record should make every attempt to do so as much in advance of the hearing as possible.
 - (ii) Any party wishing to provide the panel with additional documentation at the hearing should make sufficient copies of the additional documentation for the panel members and the other party.

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.

- (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 within the timelines, the Tribunal will forward the appellant's submission to the ministry and will give it seven (7) business days in which to provide a submission in response.
 - (iv) If no submission is received by a party in 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 to provide a written submission, this request must be in writing to the Tribunal in advance of the date on which the submission is due. Any such request must be accompanied by the reasons for the request.
 - (ii) Following receipt of a request for an extension of time, the Tribunal will issue a decision in writing to the parties.
- (d) Panel Review of 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 to decide whether or not to accept the late submission.

6.0 DISMISSAL OF APPEALS

6.1 Consent Dismissals

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

8.2 *Special Needs*

- (a) Any party requiring accommodation for a disability must inform the Tribunal as much in advance of the hearing as possible.
- (b) The Tribunal will make every attempt to accommodate the parties' needs as is reasonable in the circumstances.