

PREPARING FOR AN ORAL HEARING BEFORE THE INDUSTRY TRAINING APPEAL BOARD

This is an information document designed to assist you in preparing for your hearing before the Board. It is not intended as a substitute for the *Industry Training Authority Act* or its Regulation, the *Administrative Tribunals Act* or the Board's Rules.

Please note that parties are free to discuss their case and try to resolve the matter on their own before the hearing. The Board encourages parties, wherever possible, to communicate directly with one another throughout the process in an effort to resolve some or all of the issues before the hearing starts.

The only information the Board will consider in an appeal is the information that the parties present to it. Therefore, everything that you think is relevant to the case should be given to the Board and the other party as soon as possible before, or during, the appeal hearing.

How do I prepare for the hearing?

1. Think about what you really want from this case. Make sure you know what it is you want the Board to decide in your favor. It is useful to itemize at the outset what you want out of the appeal. You need to have a clear understanding of the issues to be decided in the appeal and then concentrate on gathering the information you need to build a strong and convincing case to bring before the panel.
2. **Evidence** - prepare and organize the evidence you will be relying on to prove your case. Try to break your case down into each of its elements and decide what evidence you will use to prove each one. There are several kinds of evidence, including:
 - oral testimony: a witness may attend the hearing to give a statement and answer questions. In many Board hearings, the appellant and the respondent are the only witnesses providing oral testimony;
 - documentary evidence: documents such as licensing records, letters, reports, etc. are presented at the hearing by either a witness or a party and may be entered as exhibits;
 - photographs: photographs may be used as evidence if the person who took them can identify them and additional copies are provided; and
 - affidavits: a witness makes a sworn (i.e. using a Notary Public) written statement that is presented to the hearing panel.

The notice of appeal and other documents and evidence you intend to present should form the basis of your Statement of Points, which you will file with the

Board prior to the hearing. You can also use your Statement of Points at the hearing as your speaking notes or a guideline for giving your oral testimony.

Check to ensure that you are providing sufficient evidence to establish what you want the panel to decide.

3. **Documents** - you must bring to the hearing all the documents that you will be relying on. Most of the documents that have been filed with the Board before the hearing should already be included in your Appeal Book. If you have additional documents to file at the hearing, you need to bring extra copies for the hearing panel, the other party(ies), and an exhibit copy (6 copies in total). New documents may be entered as exhibits at the hearing. You should be very familiar with the documents you will use at the hearing. When you or a witness refers to a document, you must be able to direct the panel to that document so that the panel can follow along.
4. **Your role at the hearing** - you may be the main or only witness for your case and you may be asked to simply tell your story. So prepare what you will say. Usually the best way to organize a story is in the order that the events actually happened. Think about how you would explain the case to another person who doesn't know you or the issue(s) involved. Use your Statement of Points and speaking notes to list all of the points you wish to cover. ***The hearing panel will make its decision based only on the arguments and evidence it hears at the hearing – make sure you say and produce everything that might be necessary to prove your case.*** Have a brief opening statement (what you believe the appeal is about and what you want the Board to do) ready to present at the beginning of the hearing, as a summary of what you will try to prove at the hearing.
5. **Witnesses** - it is up to each party to decide whether to ask other people to come to the hearing to testify as a witness, in addition to themselves. The parties should approach the people they want as witnesses as early as possible to ensure the person is able to attend the hearing on the scheduled date. Witnesses must have personal, first-hand knowledge of the facts you want them to tell the hearing panel about. Hearsay evidence is something that the witness only knows about from hearing someone else say it and, if allowed, will normally not be given much weight by the panel in its decision.
6. **Expert witnesses** - experts are the only witnesses who are allowed to give evidence about their opinions. Experts include professionals or people who have a lot of experience in their field. There are special rules and deadlines for expert witnesses. If you think you will be calling an expert witness, please notify the Board office immediately to discuss what you need to do.
7. **Preparing witnesses** - think carefully about what questions you will have to ask your witness in order to get the evidence you need, and write the questions down. Don't ask questions that suggest the 'right' answer. These are called 'leading' questions. For instance, don't ask, 'Was the light red?' Instead ask, 'What color was the light?' Do review the questions with your witnesses beforehand. It is all right for you to discuss the case with them, but you must not tell them what to say. If your witness refuses to attend

the hearing voluntarily you may contact the Board to apply for an order to compel your witness to attend at the hearing to testify or to produce a document. You are responsible for requesting the order from the Board and for serving it on the person you want to testify. The person ordered to attend the hearing may ask the Board to cancel or vary the order.

8. **Cross-examination** - after you have asked your witness questions, the other party and the hearing panel may 'cross-examine' or ask questions of the witness. Similarly, if you are the only witness in your case, after you have made your statement or told your story to the panel, the other party will have a chance to cross-examine you. You also get to do this with witnesses called by the other party. Sometimes cross-examination can be difficult to do. If you need time to prepare your questions, you may ask the panel for a short break.
9. **Keeping track of what's happening during the hearing** - it's not easy to be speaking, acting as a witness, answering questions, cross-examining other witnesses and listening to what another party is saying. If you can, have someone attend the hearing with you to sit beside you and take notes of what's happening. This will help you to keep track of what's going on and help you decide what points (i.e. in response to something someone else has said) you want to bring up later in the hearing. *If you're having trouble keeping up, ask the panel for an explanation or a break so that you can collect your thoughts.*
10. **Hearing preparation checklist**
 - Review the notice of appeal and any other relevant documents.
 - Review the results of the pre-hearing conference if there was one.
 - List the remedies you want from the Board.
 - List the points you need to prove to win the appeal.
 - Consider how you will prove each one (testimony, documents, photos, etc).
 - Gather the documents you need and organize them in logical order so you can easily refer to them at the hearing and be able to point the panel to the documents as you go along.
 - Prepare your statement or outline for your own oral testimony.
 - Contact any additional witnesses you decide are necessary.
 - Prepare questions for your witnesses and review them together with the witness.
 - Prepare a list of potential questions for cross-examination of the other party's witnesses.
 - On your hearing date, plan to arrive well ahead of the scheduled time so that you will be relaxed and ready to begin.
11. **The hearing** - the Board attempts to keep the proceedings as informal and relaxed as possible. The appellant will present his or her arguments and evidence to the panel first. The respondent will then make its submissions and present its evidence to the panel in support of the original decision.

Hearings are open to the public, and therefore, members of the public are welcome to attend unless the hearing panel determines that all or a portion of the hearing should be closed. Participation in the appeal, however, is restricted to the parties and their witnesses.

The hearing process will be determined by the panel hearing the appeal and may vary in different cases, but will generally be conducted as follows:

- The Chair of the hearing panel will call the hearing to order. The Chair will introduce the appeal and the panel, and deal with any preliminary matters such as time limits, breaks, questions, etc. The Chair will then invite the parties in attendance to introduce themselves.
- The appellant and then the respondent will be offered an opportunity to make a brief opening statement outlining their case, listing their witnesses, and stating the remedy they seek from the Board. This is optional, and a party may choose not to present an opening statement.
- The appellant and respondent, in turn, present their evidence, including their own testimony and that of any other witnesses. Witnesses may be asked to give their evidence under oath or to affirm that the testimony will be true. Following the testimony of each witness, the other party may cross-examine or question the witness, followed by questioning by the panel members. After any questions by the panel, the person calling the witness will have the opportunity to ask any 'questions arising'.

Note: The hearing panel may require witnesses to remove themselves from the hearing room until after they have presented their evidence.

- Following the presentation of evidence, the appellant and respondent, in turn, will present their closing arguments and again outline the remedy they are seeking. In some cases, the panel may require the parties to file their closing arguments in writing after the hearing.
- The panel Chair will then close the hearing and the participants will leave the hearing room. The panel will convene alone to discuss the case and deliberate on their findings.
- After the oral hearing is completed, the panel may find that further information is required from one or more of the parties in order to make a decision on the appeal. If the panel requests additional information, all parties will have an opportunity to respond to that information.
- The panel will usually 'reserve' its decision and issue a written decision at a later date. However, in some cases the panel may issue an oral decision at the end of the oral hearing. In all cases, written reasons for the decision will be provided to the parties at a later date and as soon as practicable after the hearing. After the parties have received the decision, a copy may be posted on the Board's website.