



## **INTRODUCTION TO ADMINISTRATIVE JUSTICE AND TO PLAIN LANGUAGE**

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## ACKNOWLEDGEMENTS

This guide for administrative tribunal staff and members came about through the collaborative work of many individuals and organizations. It follows on the publication in 2005 of the *Literacy and Access to Administrative Justice in Canada* and continues its work: to enable all those who work with litigants to communicate with them in plain language.

We thank the National Literacy Secretariat of Human Resources and Skills Development Canada for its support of this project. With this funding, CCAT has been able not only to publish this guide with its glossary but also to conduct regional and national workshops on literacy awareness and to develop distance-learning courses.

We thank the members of CCAT's Literacy and Access to Administrative Justice Committee who have given freely of their time and expertise in shepherding this guide through the various stages.

We recognize with thanks the contribution of Éducaloi, a nonprofit organization dedicated to providing legal information in everyday language, which developed the content of this book. We also thank the editors who worked on this project, Eddy Cavé of Traductions Multilingues Eurêka, Inc. and Patricia Buchanan of Buchanan Indexing & Editing.

We acknowledge with appreciation all those who have continued to press for materials on literacy. On behalf of the entire team, I would like to thank everyone who contributed to this project. We hope this publication is one more step toward an administrative justice system that is understandable and fair for all who use it.

Arthur B. Trudeau  
Executive Director  
Council of Canadian Administrative Tribunals





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## FOREWORD

The statistics on low literacy in Canada are disturbing. In a wealthy Western nation with a long history of public schooling, 40 per cent of the population struggle with reading and writing every day of their lives. And that is just the overall score. When one looks at various segments of the population, the figures get grimmer: 60 per cent of immigrants have low literacy; between 18 and 38 per cent of youth, depending on the area of the country, are not functionally literate; 65 per cent of prison inmates have literacy problems; and where prison inmates are mainly Aboriginal people, people with learning disabilities, and those mired in cyclical poverty, the low literacy level can soar to a shocking 80 per cent.

Litigants before administrative tribunals are representative of the Canadian population and so a fair percentage has low literacy skills. And the unfamiliar world of the administrative justice system makes these problems worse: the procedures, the forms, evidence, and hearings. It can be frightening, intimidating, humiliating. Added to this situation is the fact that many litigants try to represent themselves but without knowledge of legal terminology or procedure.

Low literacy can in essence deny equal access to justice. So members of administrative tribunals try to assist by explaining the process, ensuring both parties understand what is going on, giving information about the law and evidence requirements, modifying the way evidence is taken, and by questioning witnesses.

The Council of Canadian Administrative Tribunals (CCAT) is working to help both tribunal personnel and litigants with literacy problems through its literacy projects, started in 2003. Phases One and Two of the project have been funded by the National Literacy Secretariat of Human Resources and Skills Development Canada. Phase One (2003-2005) produced the book, *Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language*.

Phase Two (2006-2007) continued this work with a major goal being the publication of this guide, *Introduction to Administrative Justice and to Plain Language*. This book contains an extensive section on how to write in plain language, a clear description of the administrative justice system, and a glossary of some 200 legal terms defined in plain language. The book is planned as a ready reference for administrative tribunal staff and members when they are explaining procedures, concepts, and legal terms to litigants. I hope it will help to increase litigants' understanding of administrative justice. And a more thorough understanding of the whole process translates into more equal access to justice.

Terry Sargeant  
Vice-Chair, Council of Canadian Administrative Tribunals  
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## PURPOSE OF THE MANUAL

Have you ever run into a problem during your vacation and had to deal with it in another language? If yes, do you remember feeling stressed and helpless as you looked over documents written in a language you didn't understand? People spoke to you but you didn't really understand what they were saying. You wanted to ask for help but it was hard to get people to understand what you were saying or writing. For you, this experience may just have been a difficult moment during a vacation. But for many of our fellow citizens with low literacy skills, it happens all the time.

A large segment of our population is unable to read a simple text such as the instructions on a medicine bottle. Imagine how these people feel when they have to deal with a proceeding before an administrative tribunal, where they receive a ton of documents and have to read and hear strange, new words they don't understand. And all this in public.

You are familiar with the culture of an administrative tribunal: its history, its demands, its ways, and in particular, its language. But this specialized language, unknown and difficult for the public, is incomprehensible for people with low literacy skills.

Staff and members of administrative tribunals can be one of the solutions to this problem. Whether an information officer at the end of a phone line, the decision-maker presiding over a hearing, or an officer working for a ministry or an organization, you are in a position to help people with low literacy skills.

Legal language can be simplified using plain everyday language. In this handbook are certain principles to help you simplify legal language and communicate more efficiently with the people you meet every day. The principles are generally quite simple and will help you to explain to applicants the role of your tribunal, your role at the tribunal, the rules of evidence and procedure used by your tribunal, the rights and obligations of parties, and many other important topics. They will help you communicate with citizens in letters, in decisions, at the information service desk of your tribunal, on the telephone, and even during a hearing.

This manual has three main parts.

- Part One, *Plain Language*, describes the main principles behind simplifying communications. Although this part deals mainly with ways to simplify written material, the suggestions can easily be used to simplify oral communications. This part is an overview of the rules of writing in plain language. There are many other plain language resources that can help you gain a deeper understanding of the topic.
- Part Two, *The Administrative Tribunal*, is a model that applies the principles of plain language in explaining the main legal rules used before administrative tribunals in Canada.
- Part Three, the *Glossary*, contains the main terms used before administrative tribunals in Canada. Each term is defined in plain language.

We wanted to create a document that would be applicable throughout Canada. The terminology and the meaning of the concepts explained in this manual can vary from one province to another and from one tribunal to another. So you will probably not find here all the characteristics and nuances that are particular to your tribunal. But you will find information you can adapt to your situation so you can better serve your clientele, especially people with low literacy skills. As noted above, the glossary contains plain language definitions of legal and technical words used in administrative justice.

Finally, it is necessary to underline that this bilingual guide is the result of parallel drafting processes. Thus, the reader should not expect either version to be a mere translation of the other.

You can use the information in this manual in many ways: developing a training program, writing information pamphlets for your clientele, or writing the screenplay of an educational video.

Enjoy reading!

## PART ONE: PLAIN LANGUAGE

### 1. Plain language — a definition

Plain language is clear, simple writing that is easily understood by the people it is written for. Plain language focuses on a reader's needs and abilities. Its goal is to make sure that a reader can understand everything that the writer wants to communicate.

When writing in English, plain language means plain English. This does not mean that you write at the elementary school level or use only one-syllable words. It also doesn't mean leaving out important information. So what does it mean?

#### Plain language means

- focusing on the needs and abilities of the audience who will read the document;
- thinking about how information is organized in a document;
- using simple, precise, and everyday words;
- paying attention to how words are placed in a sentence and how sentences are organized into paragraphs;
- using good document design and layout; and
- testing the document to see if it is easy to read and understand.

Each document is different, so there isn't just one way to write in plain language. The plain language techniques that apply to one document won't necessarily apply to another document. The most important thing to ask yourself is: Will my audience have difficulty understanding my document? If the answer is yes, re write the document until your readers will be able to easily read and understand it.

### 2. Plain language — saving time, effort, and money

Plain language documents are easier to read and understand. Readers have fewer questions about the information in the document, so they

spend less time looking for explanations. Readers make fewer mistakes, so things get done faster. Research shows that

- people find it easier to understand plain language forms;
- people complete plain language forms faster;
- people who receive plain language forms have fewer questions; and
- fewer plain language forms need to be changed after being filled out.<sup>1</sup>

Although plain language documents may take longer to write at first, they save time, effort, and money in the long run.

Ready to write in plain language? Here are some steps to get you started!

### **3. Knowing your audience**

Plain language takes into account the needs and abilities of the audience who will read the document. You want to create documents that the audience can easily read, understand, and use. So before doing anything else, ask yourself: Who is the audience for my document?

The audience could be

- the general public,
- a group within the public, or
- a specific person.

When writing for the general public or a group within the general public, write to have the document understood by most people in the public or the group. When writing to a particular person, you should consider the person's situation and communicate the information that he or she needs. Take into account anything you know about the person, such as his or her age, sex, literacy level, familiarity with the topic, mother tongue, etc.

If you have time, do some research on your audience. See if you can talk to a person who is a member of your audience. You can also contact

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1. M.M. Asprey, *Plain Language for Lawyers*, 3d ed. (Annandale, N.S.W.: Federation Press, 2003), p. 37.

organizations or people who deal with members of your audience. Your research will help you learn about the needs and abilities of your audience.

Tailor the writing to your audience. Add more details when the audience knows little about the topic and add fewer details when the audience is familiar with the topic. If writing a pamphlet for engineers, you can use technical engineering terms since your readers will be familiar with them. If you are writing a letter to a person who is not a lawyer, you should explain a legal provision that you are including in the letter.

And if you don't know how familiar the audience is with the topic, write as if your audience is not familiar with the topic.

Ask yourself: What information does the reader need? Then organize the document based on the reader's needs.

## 4. Planning your document

Writing in plain language means thinking about how information is organized in a document. A well-organized document is easier to read, understand, and use. Make a plan to organize the information in the document. Ask yourself:

- What am I trying to communicate?
- Do I have all the information?
- Have I read all the information?
- Do I know the main issues involved in a topic?
- What information needs to be in the document? (Think of your audience and what it needs to know.)
- What kind of a document do I need—a letter, pamphlet, Web site, etc?

After thinking about these questions, start making a plan. Write down all the information, and decide which information will go where based on your audience's needs. Think of what your audience will most want to know, and put that information first. Put related information together.

Each document is different, so the same plan may not work for all documents. Ask yourself: Have I organized the document so it is easier for my audience to read, understand, and use the information?

After making a plan, you are ready to start writing!

## 5. Tips for writing in plain language

You can use certain techniques to write in plain language. Remember, though, that these techniques are guidelines, not rules that must be followed rigidly all the time. Each document is different and what works for one document may not work for another. Always think of your audience, and ask yourself: Will my audience understand what I am trying to say?

### ***Use simple, precise, everyday words***

Replace complicated, unfamiliar words with simple, precise, everyday words. When choosing words, think of your audience and ask yourself if your audience will understand the words you are using.

Choose the simpler synonym. For example, write

- *understand* instead of *comprehend*
- *under* instead of *pursuant*
- *start* instead of *commence*

Use fewer words. For example, write

- *for* instead of *on behalf of*
- *because* instead of *because of the fact that*
- *if* instead of *in the event that*

### ***Avoid technical words***

Avoid using technical words if some or all of your readers won't know what they mean. See if you can use a simpler word to replace the technical word. If that won't do, explain the technical word in plain language the first time that word is used in the document. You can also explain technical words in a glossary.

### ***Use the same word for the same concept***

Readers can get confused when different words are used for the same concept. They may think you are referring to something completely new when you are not.



*Before:* The landlord and tenant signed an agreement. The rental contract had a one-year term. In section 4 of the lease, the tenant agreed to pay a monthly rent of \$600.

*After:* The landlord and tenant signed a one-year lease. In section 4 of the lease, the tenant agreed to pay a monthly rent of \$600.

### **Avoid turning verbs into nouns**

Verbs that are turned into nouns are called nominalizations.

<i>Verb</i>	<i>Nominalization</i>
State	Statement
Realize	Realization
Pay	Payment
Stipulate	Stipulation

Sentences with nouns made from verbs are longer than if you just use a verb. Using a verb generally makes a sentence shorter and stronger.

*With nominalization:* The tenant made a payment of rent to the landlord.

*Without nominalization:* The tenant paid rent to the landlord.

Use a nominalization if it is necessary. For example, *The tenant's payment was late.*

### **Address the reader as 'you'**

Sometimes you can use you to connect yourself to your reader. For example, you are writing a letter to a person who needs to fill out a form before next month.

*Before:* The applicant must submit the form before February 1, 2007.

*After:* You must submit the form before February 1, 2007.

In this example, you made the sentence less abstract: the reader gets a clearer idea of what he or she needs to do.

Using *you* isn't always appropriate. For example, if you are writing a pamphlet on criminal law, it is better to write *If a person commits murder, he or she may be imprisoned for life* rather than *If you commit murder, you may be imprisoned for life*. Using *you* is inappropriate here because it implies that a reader may commit a crime.

Whether or not you should use *you* is a question of judgment. Think of the context of your document, and see if using *you* is appropriate. If you decide to use *you*, use it consistently throughout the document. For example,

*Before:* You must submit the form before February 1, 2007.  
Once we receive the form, we will contact the applicant for a meeting.

*After:* You must submit the form before February 1, 2007.  
Once we receive the form, we will contact you for a meeting.

### **Write short sentences**

Sentences should contain one or two ideas. Like long paragraphs, long sentences are harder to understand. They usually contain many ideas and the reader has to remember all the ideas to understand the sentence.

A long sentence may contain many ideas, such as the main point of the sentence, conditions, and exceptions. To break a long sentence into several shorter sentences, figure out each of the different ideas in the long sentence. Then write short sentences for each idea. The main point of the long sentence should be the first short sentence. Follow it with short sentences that contain the other ideas of the long sentence, such as conditions and exceptions. For example:

*Before:* Upon a written notice sent to the landlord, provided that the notice is not sent less than 60 days before the end of the lease, the tenant may end the lease.

*After:* The tenant may end the lease by sending a written notice to the landlord. The tenant must send the written notice at least 60 days before the end of the lease.

### ***Bring together the subject, verb, and object***

The subject, verb, and object of a sentence tell a reader what the sentence is about. For example, in the sentence *The lawyer sent the notice, the subject is lawyer*, the verb is *sent*, and the object is *notice*.

Sentences are easier to understand when the subject, verb, and object are closer together. Avoid putting words between the subject and the verb, and the verb and the object. Put the subject, verb, and object at or near the beginning of the sentence.

*Before:* The employee, provided that the employee has worked for one year for the employer, can take 2 weeks of paid vacation.

*After:* The employee can take 2 weeks of paid vacation, if the employee has worked for the employer for one year.

### ***Use the active rather than the passive voice***

In the active voice, the subject of the sentence performs the action of the verb. For example, the sentence *The lawyer questions the witness* is in the active voice because the subject *lawyer* acts (questions the witness).

In the passive voice, the subject of the sentence is being acted on. For example, the sentence *The witness is being questioned by the lawyer* is in the passive voice because the subject *witness* is being acted on (being questioned by the lawyer).

Generally, you should write in the active voice. Sentences written in the active voice are shorter and stronger.

*Passive:* The notice was sent by her.

*Active:* She sent the notice.

A sentence in the active voice always states the person or thing performing the action of the verb; otherwise, the sentence wouldn't make any sense. But a sentence in the passive voice will make sense even if it omits the person or thing performing the action of the verb. A writer can easily forget to include the person or thing performing the action of the verb, thus making the sentence unclear.

*Active:* The tenant signed the lease.

*Passive:* A lease was signed. (This sentence makes sense, but it is unclear because we don't know who signed the lease.)

Sometimes the passive voice is better than the active voice. Use the passive voice if you don't need to mention or don't know who or what performs the action of the verb.

### ***Be careful using conditions and exceptions***

Conditions and exceptions are often jumbled together with the main point of a sentence, and readers can easily get confused. Conditions and exceptions should not prevent readers from easily understanding the main point of a sentence.

*Before:* Unless a decision is not final, a tribunal must, provided that the applicant has paid the necessary fees and filed an application for review not more than 30 days after the tribunal made the decision, review the decision.

*After:* An applicant can ask a tribunal to review a decision that it made. An applicant must pay the necessary fees and file an application for review within the 30 days after the tribunal made the decision. A tribunal will only review final decisions.

Short conditions and exceptions can be placed at the beginning of a sentence.

*Before:* The landlord, if the lease has a one-year term, must give a notice of a rent increase 2 months before the lease ends.

*After:* If it is a one-year lease, the landlord must give a notice of a rent increase 2 months before the lease ends.

Place long conditions and exceptions at the end of a sentence after the main point of the sentence. They can also be placed in separate sentences that follow the sentence containing the main point. When there are many conditions or exceptions, you can list them. The list should be at the end of a sentence, not at its beginning or middle.

*Before:* Unless the applicant is less than 18 years old, an applicant, if the applicant has passed the written exam and completed 12 months of driving courses, may apply for a driver's licence.

*After:* An applicant may apply for a driver's licence if the applicant

- is 18 years old or older,
- has passed the written exam, and
- has completed 12 months of driving courses.

Pay attention to the grammar when making a list. All items in a list should have the same grammatical structure.

*Before:*

An applicant may apply for a driver's licence if the applicant

- is 18 years old or older,
- has passed the written exam, and
- *12 months of driving courses have been completed.* (This bullet does not have the same grammatical structure as the other two.)

*After:*

An applicant may apply for a driver's licence if the applicant

- is 18 years old or older,
- has passed the written exam, and
- *has completed 12 months of driving courses.*

### **Write short paragraphs**

Paragraphs should be short. Each paragraph should contain one idea. Long paragraphs usually contain a lot of information and are harder to understand. To replace a long paragraph, figure out all the ideas contained in a long paragraph. Then write a short paragraph for each idea.

### ***Be positive***

Generally, sentences should be positive rather than negative. Negative sentences are longer and harder to understand.

*Negative:* She did not forget to file the affidavit.

*Positive:* She remembered to file the affidavit.

Not all negative sentences can be turned into positive sentences. Try turning a negative sentence into a positive one, and see if it still makes sense. If it doesn't, leave it as a negative sentence.

Sentences with more than one negative are even harder to understand. Try eliminating as many of the negatives as you can, and rewrite the sentence positively.

*Negative:* She did not fail to deliver the notice yesterday.

*Positive:* She delivered the notice yesterday.

### ***Use clear, descriptive headings***

Clear, descriptive headings make it easier to find information in a document. A heading should give the reader an idea of what the following text is about.

Headings can be questions, for example, *What is plain language?* They can also describe the information that follows them. For example, *Tips for writing in plain language*.

Avoid meaningless headings that don't say much about the information that follows them. For example, the heading *Introduction* only tells readers that they are at the beginning of the document. It says nothing about the information found in that part of the document.

### ***Give examples***

Examples help readers understand the information in your document. Give examples to illustrate concepts. Draw more attention to examples by using different formatting for examples. For example, put examples in a new paragraph and indent it more than the rest of the text.

### ***Give other sources of information***

Your readers may get to the end of your document and have questions. Refer your readers to other sources of information, such as a telephone number, other documents, or a Web site, so that they can find answers to their questions.

### ***Keep on practising!***

Remember that writing in plain language is a process that takes practice. Reading the rules isn't enough. You can only master them by using them every day in your writing!

## **6. Tips for designing plain language documents**

A document with a good design and layout is easier to read, understand, and use. Here are a few tips on designing plain language documents.

### ***Add more white space***

Adding more white space to your documents makes them easier to read and more attractive. Documents with dense text and little white space can intimidate readers. Reader surveys have shown that English textbooks are most readable when the pages are 20 per cent white space.

You can add white space to your documents by

- increasing the margins of your document;
- emphasize parts of the document by putting more white space around them, for example, indenting quotes or examples;
- adding more white space before a heading than after it, so that the heading will look connected to the text that follows it; and
- leaving more white space after a section to show that it has ended.

### ***Choose an appropriate typeface and type size***

A typeface is the design of a printed character. For example, **Arial** (used in the headings) is a typeface. Two categories of typeface are serif and sans serif.

Serif typefaces (for example, **Times New Roman**) have little lines at the beginning and end of characters. Serif characters are made up of thick and thin lines.

*Serif typeface:* Ylm

Sans serif typeface (for example, **Arial**) does not have little lines at the beginning and end of characters. The lines of sans serif characters have the same thickness.

*Sans serif typeface:* Ylm

Serif typefaces are easier to read than sans serif typefaces. Use serif typefaces for the main text of your document. Sans serif typefaces can be used for headings or to emphasize words.

Type should be at least 12 point in size. Avoid putting long passages in italics as they are hard to read.

### ***Format with justified left margin, ragged right margin***

Your text should be justified (even) on the left margin and ragged (uneven) on the right margin. The text is easier to read when it is formatted this way. For example, the text in this document is justified on the left margin and ragged on the right margin.

### ***Make headings stand out and be meaningful***

Headings should look different from the general text of your document. You can emphasize a heading by using a different typeface or by using a different style (bold, underline, size, etc.) of the typeface used for the general text of your document. Headings at the same level should look the same. Using consistent styles for the headings will make it easier for readers to understand which level of a document they are at.



### ***Avoid large blocks of text***

Text organized in large blocks can intimidate readers. Instead of having just paragraphs, break the rhythm of your text by

- adding sub-headings,
- making lists with bullets,
- using tables,
- adding pictures,
- putting certain parts of the text, like examples, apart from the rest of the text.

### ***Consult a design expert***

The design and layout tips given in this section are general, and there are many other considerations for good document design and layout. If you have the time or money, it is always a good idea to consult a design expert, who can help you design your document to make it easy to read, understand, and use.

## **7. Testing your document**

Testing your document helps you figure out if your document is actually easier to read and understand. Testing gives you someone else's perspective on the document and helps you see anything you missed.

You can test the document in many ways. If you don't have a lot of time or money, ask some of your colleagues to look it over. Or take a break from the document (a few hours or a day) and look it over with a clear mind.

If you have the time and money, test the document with members of your audience in focus groups or one-on-one. The feedback you receive will be invaluable in determining whether you have communicated what you wanted to communicate to your readers.

### ***Readability and the Fog Index***

Readability is the measure of how easily a piece of writing can be read by the people it is aimed at. It is influenced by the choice of words, the typeface, the amount of white space, and how the text is laid out.

Readability is measured by a formula called “fog index”. There are many fog indexes, but the simplest and most common is the Gunning Fog Index :

$$[(\text{average length of sentences}) + (\text{percentage of words of more than 6 letters})] \times 0.4$$

or

$$[(\text{total number of words} / \text{total number of sentences}) + (\text{total number of words longer than 6 letters} / \text{total number of words} \times 100)] \times 0.4$$

The number you get shows the number of years of formal education necessary to understand the document. You want a Fog Index level around 7. If the level is above 12, the text is too hard for most people to read.

For example, let us take the following sample of 135 words.

Almost 50 per cent of Canadians aged 16 and over have problems with reading. They find it hard to read and understand job applications or bus and train schedules. Also hard are instructions for taking pills or for operating machines.

People have a right to know about the legal processes they are involved in. Case law in Canada states that a person gets fair justice only when he or she understands what is going on in a court or tribunal and can represent him/herself adequately. Tribunals, like other courts, have to meet the standards set in case law. Clients have to know what is going on. If this is not done, case law states that these people are not truly informed and therefore cannot truly exercise their rights. The result may be denial of justice.

Calculate as follows:

	Result:
1. Count the words in the sample . . . . .	135
2. Count the number of sentences . . . . .	9
3. Calculate the average sentence length (divide the total number of words by the number of sentences) . . . . .	15
4. Count the number of big words (more than 6 letters) . . . . .	10
5. Calculate the percentage of big words (divide the number of big words by the total number of words (10 : 135) and multiply by 100 = . . . . .	7%
6. Add the average sentence length to the percentage of big words (15 + 7) = . . . . .	22
7. Multiply the result 22 by 0.4 (22 x 0.4) = . . . . .	8.8

The Fog Index is useful, but not a perfect tool. Not all “big” words are hard to understand. For example, in the passage above, “Canadians,” “applications,” and “understand” can be easily understood. If we remove these from the calculation, the Fog Index drops from 8.8 to 7.6.



## PART TWO: ADMINISTRATIVE TRIBUNALS\*

### 1. Tribunals — a definition

In its broadest meaning, a tribunal is a public body that handles cases submitted to it, according to rules set out by law. A tribunal's main purpose is to make decisions regarding conflicts or problems that people cannot resolve by themselves through negotiation, mediation, or otherwise. When a case is before a tribunal, one or more decision-makers make decisions.

### 2. Administrative tribunals

Administrative tribunals were created to increase access to justice for citizens in their dealings with the public administration. There is a wide variety of these administrative tribunals. They have many elements in common and some elements that are different.

Common elements of administrative tribunals include the following:

- Administrative tribunals are bound by fewer rules of evidence and procedure than other tribunals. Also, the rules that do exist are much more flexible. In the majority of cases, administrative tribunals determine their own rules.
- Each one specializes in a specific area: labour relations, expropriation, alcohol permits, employment insurance, human rights, etc. The list is very long. In fact, there are almost one thousand administrative tribunals in Canada at federal, provincial, and territorial levels.
- Many administrative tribunals are connected to a governmental body. However, by law, every administrative tribunal has to be autonomous and independent from any influence, including any that might be exerted by the government. Tribunals and

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\* For definitions of technical and legal terms used in administrative justice, please refer to the glossary, pages 47 to 78.

their decision-makers must be independent from the government. Decision-makers must have the freedom to render the decisions they believe are correct according to law, without fear of the tribunal being abolished by the government, having its budget cut, or of losing their jobs.

- Neutrality and impartiality are among the fundamental requirements imposed on tribunals and their decision-makers. They must not have an interest in or any preconceptions about the cases they are handling.

Administrative tribunals can also be distinguished from one another

- by the type of conflicts they handle:
  - where one party is the government and the other consists of individuals:  
The Immigration and Refugee Board of Canada is one example. Its function is to render decisions on questions regarding immigrants and refugees in Canada.
  - where all the parties are citizens:  
the Landlord and Tenant Board of Ontario is an example. It handles conflicts between landlords and tenants of residential housing
- by the number of cases they handle:  
Some tribunals handle a large number of very short cases every day, each of which might last just a few minutes. Other administrative tribunals handle very complex cases that involve many parties and can last many days or months.

### **3. The secretariat of administrative tribunals**

The secretariat (also called the registrar's office) is the administrative unit of administrative tribunals. Apart from the hearing, which is the heart of a tribunal's activities, many other activities are necessary to make sure the tribunal functions smoothly. The size of the secretariat and the number of its employees depend on how big the tribunal is and how many cases it handles every year.

The secretariat is usually located in the same building as the tribunal. It often takes the form of a service counter.

Some functions of the secretariat are the following:

- Parties bring their procedures and exhibits here to add them to their file.
- Procedures are stamped. This involves paying a certain amount, having the original version of the procedure stamped, and assigning it a file number.
- Most official documents sent out by a tribunal, such as notices of hearing, are sent from the secretariat.
- Parties can go to the secretariat to find out about procedure and obtain useful forms. Secretariat clerks often provide citizens with forms for the more frequent applications, such as applications for postponement or revocation.
- The secretariat can be asked for copies of procedures, evidence, or other documents. However, photocopying costs are generally charged.
- The secretariat stores all the decisions of the tribunal.

Some tribunals, whose activities take place throughout a whole province or even across the country, may not have a secretariat or hearing room in every region (district). The decision-makers therefore move from one region to another, as needed, to hold hearings. Certain tasks of the tribunal's secretariat, such as schedules of hearings, sending notices of hearing, etc., are carried out by the secretariat of the administrative tribunal located in a large city. Other tasks (receiving evidence, procedures, etc.) can be carried out by employees in the secretariat of another tribunal altogether.

Secretariat employees, such as the clerk, carry out varied administrative tasks. The clerk is often responsible for official functions. For example, certain procedures have to be signed by the clerk in order to be legally valid. This is sometimes the case for the summons to appear (also called the subpoena).

#### **4. The decision-makers**

Administrative hearings are held before one or more decision-makers. This very general term can also include commissioners, adjudicators, and members. In Quebec, decision-makers are also called administrative judges. Every tribunal uses its own term for its decision-makers.

They are often lawyers or sometimes even judges and generally have experience in the tribunal's area of specialty.

Some administrative tribunal members may have staff assistance in the performance of their duties.

Decision-makers are named or replaced by the government according to a process set out by law.

### ***Decision-makers at the hearing***

Before beginning a hearing, the decision-makers read the case file. This file contains all the required forms, submissions, evidence, and sometimes even the written arguments prepared by the parties. The decision-makers therefore get a good idea of the case and the contested points (the issues) before the hearing. This advance preparation also allows the decision-makers to review, as needed, the legal notions that apply in this type of situation.

During the hearing, it is up to the decision-makers to make decisions. One of their main tasks is listening to the evidence presented by the parties because their decision will be based on this evidence.

In theory, during the hearing, it is not up to the decision-makers to examine or cross-examine the witnesses. Neither is it up to the decision-makers to decide which documents are submitted as evidence. However, decision-makers can choose to step in actively, especially when one or both parties are not represented. As a result, decision-makers themselves can sometimes carry out the examination of witnesses and can decide which of the documents brought by the parties are relevant and which are less so.

### ***Decision-makers and the decision***

Once the parties have finished presenting their evidence and their arguments (pleadings), the decision-makers have several options:

- They may withdraw to reflect on their decision and to consult the rules of law that apply. This period of reflection is called advisement. The decision-makers may take the case under advisement for a few minutes or postpone the hearing (adjourn) to another date so they can consider the case for a longer period.



- They may render a decision immediately without taking it under advisement.
- They can render their decision in writing or orally in the hearing room. In the latter case, the decision-makers are said to have rendered a decision “from the bench.”
- They may render a decision orally but deliver the reasons for the decision in writing only later. Once the decision is final and signed, the clerk sends it to the parties.

The rules of administrative tribunals often require decisions to be rendered in writing and sent to the parties.

## 5. The lawyers and representatives

### **Lawyers**

Lawyers have expertise in the area of law. They advise clients and if needed, represent clients before a tribunal. Lawyers are also responsible for drafting certain documents, such as procedures and written arguments. Finally, lawyers work with clients to develop a certain strategy to resolve the case.

Lawyers are bound by professional secrecy, meaning that the information and documents that clients give them are confidential. This is also true for the contents of clients’ files in general. Lawyers cannot reveal this information unless client permission to do so has been obtained.

### **Lawyers’ work**

Lawyers first gather information from clients in order to understand the clients’ situation well. Lawyers try to find out what evidence is available and evaluate the quality of this evidence. Then, in light of the rules of law and available evidence, lawyers advise clients on the options open to them. Even if lawyers are the experts, it is ultimately up to clients to choose one option over another; after all, it is their case. The available options will usually include the following:

- maintaining the *status quo* (that is, doing nothing),
- trying to reach a negotiated agreement (without going before a tribunal),

- initiating proceedings before a tribunal,
- presenting a response in proceedings that have already been initiated, or
- some combination of all of the above at the same time.

If clients decide to try to reach an agreement with the other party, lawyers accompany them during the process. There are numerous techniques, called alternative dispute resolution mechanisms, that are designed to resolve a conflict through agreement. Many administrative tribunals encourage mechanisms such as mediation and conciliation in order to produce this type of settlement.

If clients choose instead to initiate proceedings or if proceedings are already underway and clients want to defend themselves, then the lawyers assemble the necessary procedures and prepare for the hearing. Lawyers draft the forms or submissions required by the administrative tribunal, as needed.

### ***Lawyers before the hearing***

Between the beginning of proceedings and the date of the hearing, lawyers take charge of communications with the other party, particularly with regard to evidence. Throughout the case, the parties can communicate with one another by letter, telephone, e-mail, or in person.

The rules of different administrative tribunals often require the parties to file their exhibits several days before the hearing and to send them to the other party. Lawyers and their clients may want to discuss this evidence.

The situation often evolves as the hearing date approaches. Lawyers may therefore want to seize any opportunity that arises to find common ground between the parties. The majority of proceedings initiated before a tribunal end with an agreement between the parties, meaning that decision-makers are not called upon to make a decision.

### ***Lawyers at the hearing***

Lawyers speak on behalf of their clients during the hearing and communicate with the other party and the decision-makers. The lawyers examine the witnesses whom they summoned and cross-examine the other party's witnesses.

Once the evidence has been presented, lawyers argue (plead) their clients' case by

- drawing links between the different elements of evidence presented;
- giving opinions on the quality of the evidence, its relevance, and its probative value;
- recommending to the decision-makers what they should accept as true and what should not be believed;
- explaining what rules of law should apply and why;
- referring to previous decisions rendered by the tribunal (that is, the jurisprudence) and highlighting the differences or similarities with the clients' case; bringing out the weaknesses of the other party's evidence.

### ***Representatives***

Parties can be represented by non-lawyers before most administrative tribunals. A representative can be a family member, someone who works for an advocacy organization, or even a union employee.

Parties can always choose to represent themselves before an administrative tribunal.

## **6. The applicants and the principal application**

When people want an administrative tribunal to make a decision or intervene in their situation, they have to submit a written application. This application must be filed with the tribunal. The application (sometimes called a motion) is considered a motion to institute proceedings. The application opens a file before the tribunal and forms the basis of the whole case. In fact, decision-makers make their decisions on the very subject matter of this request.

### ***Applicants***

Persons making this application can be referred to by different names. The terms applicant, claimant, or interested party can be used. Before certain administrative tribunals, the terms or titles used are connected

to the specific situation that brought the parties before the tribunal. So in a labour relations context, the terms employee and employer are used. In a situation dealing with compensation, one would use *beneficiary* and *representative of the Ministry*, regardless of who initiated the proceedings before the tribunal.

In this book, the term *applicant* is used to refer to the person who initiated the proceedings. The term *principal application* refers to the document that starts the proceedings.

### ***Principal application***

The clerks of the secretariat often provide citizens with forms for the principal application. But generally, it is not mandatory to use these forms. Applicants can decide to draft the principal application themselves. But whether or not the form is used, the rules of administrative tribunals always require certain information to be in the principal application in order for it to be valid:

- Applicants have to identify themselves (family name, first name, address, etc.) and the other party.
- If the principal application challenges a decision of the governmental administration, applicants have to refer to the decision and provide copies of it.
- Before certain administrative tribunals, such as those involved when a decision of the governmental administration is challenged, it is enough for applicants simply to write that they intend to contest the decision.
- Some tribunals require more information. Applicants must explain (or allege) in sufficient detail the situation that led them to initiate proceedings. These allegations can be divided into paragraphs and, ideally, the allegations present the events in the order in which they happened. It is important to stick to the relevant facts and to allege only those facts that the applicants can prove. Also, it is important to draw links between the alleged facts and the available evidence. For example:

(...) 3. *The applicant signed a lease on December 5, 2005, as can be seen from the lease submitted as Exhibit D-2.*

- Finally, the application sets out its conclusions, the specific requests that the applicants are making to the tribunal. For example, the application may request the tribunal to
  - (...) *order the respondent to pay compensation of \_\_\_\$*
  - (...) *order the respondent to reinstate the applicant in his position*
  - (...) *grant the tenant a decrease in rent*
  - (...) *order the issuance of a licence*
  - etc.*

At the end of the day, however, decision-makers cannot grant more than the law allows them to grant. Decision-makers' powers are limited by the tribunal's jurisdiction.

## 7. The response and the respondents

### ***Response***

Simply put, the response is the respondent's answer to the principal application.

The term *response* refers to two closely connected ideas. First, it refers to the document itself (the procedure). Second, it refers to the legal concept that justifies behaviour that would otherwise be considered wrong or illegal. This text deals with the first aspect of this notion.

The clerk often provides citizens with a form on which to respond but it is not mandatory to use this form. Often, a respondent simply indicates an intention to respond to the allegations without specifying the basis of the response. For certain tribunals, responses do not even have to be filed for the case to be heard by decision-makers.

If a respondent does file a response, then it must identify the parties and include the file number (as is the case for the principal application).

Apart from this basic information, a respondent uses the response to explain his or her position regarding the applicant's allegations. In other words, the response is the respondent's version of the story; it can be more or less detailed.

A detailed response can answer each of the applicant's allegations by indicating whether the respondent accepts or contests it. This method allows decision-makers to understand the nature of the dispute between the parties by simply reading the procedures.

For example, the respondent might admit to being the applicant's employer and to the fact that the employee was fired. But the respondent may have a different version of why the employee was dismissed. The debate at the hearing will address the question of the grounds for dismissal.

The response can also contain its own conclusions. These will generally ask that the principal application and the applicant's demands be rejected.

### ***Respondents***

The term *respondent* is used before administrative tribunals; the term defendant is less common. Moreover, as mentioned above, the terms or titles used before many tribunals have a connection with the specific situation that brought the parties before the tribunal. So in a context of labour relations, one would refer to the employee or the employer. In a situation involving compensation, one would use *beneficiary* and *representative of the Ministry*, regardless of who initiated the proceedings before the tribunal.

In this text, the term *respondent* refers to the person against whom the proceedings were initiated. The term *response* refers to the document used by the respondent to inform the tribunal of its position regarding the principal application.

## **8. Other applications or requests**

As mentioned above, the application is called a motion to institute proceedings because it is the starting point for proceedings before a tribunal. However, between the filing of this application and the point at which the case is wrapped up (that is, during the proceedings), either party can file a great variety of other applications or requests in connection with the case. Decision-makers render a decision on each of these applications.

In this section of the text, the term *application* refers to this type of procedure. The motion to institute proceedings will be referred to as the “principal application.”

The procedural rules of tribunals deal with these applications and the way in which they are to be presented. Applications are generally presented verbally, without any formality, on the day of the hearing. It is also possible, but exceptional, to present an application in writing. Written applications can sometimes be accompanied by affidavits that serve as evidence.

Whether the application is written or oral, it is generally argued orally during the hearing. Decision-makers may also render a decision on the subject of an application without holding a hearing.

More general rules (provincial rules of evidence and procedure, common law rules, or even the *Canadian Charter of Rights and Freedoms*) can also apply to administrative tribunals and serve as the basis of an application.

That being said, the vast majority of administrative tribunals have adopted an informal way of dealing with files. Many of the applications explained below are used only before certain tribunals.

### ***Applications before the hearing***

Applications before the hearing, sometimes called preliminary applications, challenge the availability of a recourse or the tribunal’s competence. This basically means that a respondent can claim that the applicant picked the wrong administrative tribunal. It can in fact happen that the tribunal does not have competence (jurisdiction) to deal with the case before it. This might be because the principal application was submitted in the wrong district. Or it could be that, because of the subject in question, the case was not brought before the right tribunal. If the decision-maker agrees with the respondent, the tribunal may be obliged to stop the proceedings relating to the case.

These applications can also be used to include another party in the case, such as an intervener or a person called to appear before the tribunal. Cases can sometimes be very complex and involve the interests of several people, interest groups, or even the government itself. These

people can obtain the right to intervene in the case if they satisfy certain criteria. They then become interveners. On the other hand, a person can be forced to become involved in a case at the request of a party. For example, in a case between the government and an employee involving a work accident, the employer might be called to appear. When a person is called to appear, they are called an impleaded party.

Here are some frequent preliminary applications:

- rejection of the case without a hearing (motion for inadmissibility),
- addition of a new party (application for intervention, impleaded party),
- request for more detail in the application or response (motion for particulars),
- request to modify the text of the procedures (application to amend).

### ***Applications regarding the hearing***

Some applications deal with the hearing itself, the time or place where it is being held, and the decision-maker presiding over it. The main applications regarding the hearing are the following:

- change of hearing date (application for postponement),
- change of location of the hearing (change of district),
- change of decision-maker (recusation),
- exclusion of witnesses from the hearing room,
- closed or *in camera* hearing (exclusion of the public from the hearing room),
- non-publication order (banning the media from publishing anything that is said in the hearing room).

The rules of different administrative tribunals provide for how and when such applications can be presented. Because applications for postponement are frequent, the rules connected to these applications are explained in detail below. The criteria that decision-makers must use when deciding whether to grant the application are also explained.



### ***Application for postponement***

Procedural rules generally demand that this application be made in writing a few days before the hearing, except in urgent cases. The other party must be notified before the application is filed with the tribunal. Any of the parties can file an application for postponement.

The other party's consent to (agreement with) the application for postponement is an important element in the decision on whether or not to grant it. However, this agreement alone is not enough for the decision-maker to grant the request. The reasons for the application, the time that has passed since the principal application was filed, and the scope of the file are among the elements that must be taken into account.

For example, it would be more difficult to obtain a postponement for a three-day hearing with 15 witnesses that has already been postponed twice, than it would be to obtain a postponement for a half-hour hearing without witnesses that has never been postponed.

### ***Application for revocation***

Once a decision-maker has made a final decision on the principal application, other applications can still be presented to the tribunal. Among these types of application, the application for revocation is at the top of the list.

This application, which can be presented before most administrative tribunals, requests that a decision be annulled if the decision had been made when one of the parties was absent. The aim of this application is to hold a new hearing. Such an application can be accepted only in very specific situations:

- Often the application for revocation must be filed with the tribunal within a few days of the party finding out about the decision.
- The reason why the party was absent on the day of the hearing has to be serious (accident, illness, death in the family, etc.).
- The party asking for the revocation must have a response to make regarding the principal application. A tribunal will not agree to hold a new hearing if the respondent does not have a valid response to make.

## 9. The hearing

The hearing is the point at which the parties present their evidence and arguments in a hearing room before the decision-makers.

The hearing is at the very heart of administrative law. Fundamental rules provide that individuals have a right to a hearing to challenge governmental decisions that concern them. Barring certain exceptions, this hearing must be public, so anyone can attend it. During this hearing, parties have the right to present evidence, examine, and cross-examine witnesses and present their arguments to a decision-maker.

A hearing can be held to deal with the principal application, but it can also be held simply to deal with other applications or requests connected with the case.

Some hearings are held by video conference or even by telephone conference. Such hearings, which are becoming more frequent, are called electronic hearings. There are also written hearings. For this type of hearing, everything is done in writing, from the procedures to the evidence and arguments. The parties send their documents to the decision-maker and to the other parties. The decision-maker renders a decision on the basis of these documents. An application for postponement is often dealt with in this way.

The hearing is divided into different steps: the beginning stage, the inquiry stage, and the arguments stage.

### ***Beginning of the hearing***

The following occurs at this step:

- The decision-makers (or the clerk of the hearing if there is one) make sure all the parties are present.
- The decision-makers briefly state the nature of the application and explain how the hearing will unfold. In long and complex cases, the parties may also sum up their case verbally to the decision-maker.
- Preliminary applications may also be presented: exclusion of witnesses, request for a closed hearing, non-publication order, etc.

## ***Inquiry***

The inquiry is the step during which the parties present their evidence to the decision-makers. Applicants usually present their evidence first. They call their first witness to the witness box and the witness is sworn in. The applicants ask questions and the witness answers them to the best of his or her knowledge. This is called the examination. Once applicants have finished their questions for the witness, the other party can take a turn asking questions. This is the cross-examination and is not obligatory. Applicants present all their witnesses in this manner and submit their other evidence.

Once applicants have finished presenting their evidence, it is the respondents' turn to present evidence. Respondents call their witnesses to the witness box and ask them questions. Then the applicants have their turn questioning the respondents' witnesses. Once respondents have finished presenting their evidence, we say that the evidentiary record is closed. This is the end of the inquiry. In general, no further evidence will be presented after this point. Note, however, that respondents are never obliged to present evidence.

In certain cases, the parties do not need to present evidence. This is the case, for example, when the parties are in agreement on all the facts, and the only question in dispute concerns the rules of law applicable to the situation. This can also happen during hearings for which affidavits have already been filed.

## ***Arguments (pleadings)***

The next step is the argument; another term for this is pleading. The argument is the point at which the parties give the decision-makers their theory regarding the case by drawing links between their evidence and the applicable rules of law. The argument is essentially a final attempt to convince the decision-makers, all while picking apart the other party's position. Once again, applicants generally present arguments first, followed by respondents. Applicants then have the option of replying to the arguments of the respondent.

Once all the parties have presented their arguments, decision-makers must render a decision. They can do this right away or take the case under advisement.

## 10. Evidence

Evidence is the fundamental element of proceedings before a tribunal. Even if parties have a solid case from a legal point of view, they will not obtain the decision they seek unless they can provide evidence. This is because the law sets out rules that apply in very specific situations. In order for a rule to apply, one has to prove that the situation at hand meets the requirements laid out by the law.

Several types of evidence exist and can take the following forms:

- testimony (also called witness evidence);
- documentary, made by the filing of documents;
- opinion, which generally involves an expert;
- filing of objects;
- affidavit.

The parties can also agree before the tribunal to accept an element as fact, without requiring either party to actually prove it. This is called proof by admission.

### ***Witness evidence***

Testimony is by far the most common type of evidence. This is simply having someone speak before the tribunal, answering questions about what he or she knows about the case. Testimony is generally done under oath, one of the tools used to encourage witnesses to tell the truth. Lying under oath with the intention of misleading the tribunal is the offence of perjury.

The method of examining witnesses is generally governed by certain rules. For example, when the person questioning the witness is the party who summoned the witness, the rules might differ from those that apply when another party summoned the witness.

### ***Documentary evidence***

This refers to the use of documents as evidence. These documents can include, for example, a contract, photo, letter, report, or even a permit. Filing a document as evidence generally must be done by a witness

who is familiar with the document. For example, a photo can be filed by the person who took the photo, the person who appears in it, or someone who was present when the photo was taken.

The same rule applies for other documents. Thus a contract can be filed by the person who signed it or drafted it. In the same vein, a report must be filed by the expert who prepared it.

### ***Objects***

Depending on the case, it might also be necessary to file an object into evidence.

For example, in a case dealing with housing conditions where the dispute centres on a poorly functioning plumbing system, it might be necessary to file pipes as a physical exhibit so the decision-maker can see their condition.

When possible, the filing of photos of objects can conveniently replace filing the objects themselves.

### ***Affidavits***

Affidavit evidence is another method used to provide evidence. An affidavit is simply written testimony made under oath. It is often used in proceedings in which no hearing is being held. An affidavit is often used as evidence to support applications.

### ***Burden of proof***

With some exceptions, applicants have to prove that their conclusions should be granted. They are said to have the burden of proof. Usually before administrative tribunals, proof of a fact is made when the decision-makers consider that its existence is more probable than not. This standard is referred to as the “balance of probabilities” or “preponderance of evidence.”

For example, a worker alleges that his or her back was injured at work. The applicable rules of law provide that when a person is injured at

work and can no longer work as a result, the government must compensate the person. To obtain this compensation, the worker must prove that he or she

- was injured,
- sustained the injury at work, and
- can no longer work.

It is up to the worker to prove all these elements on a balance of probabilities. Otherwise, the decision-maker cannot grant compensation for the injury.

There is also something called the *prima facie* burden of proof, the least demanding standard. For this type of burden, the quality of the evidence is not evaluated. The simple fact of alleging the evidence is enough, as long as no other evidence proves the contrary.

### ***Rules of evidence***

The rules of evidence specify what evidence can be filed and the applicable criteria and circumstances for its filing.

While the application of rules of evidence is the subject of much debate before criminal and civil courts, the rules are relaxed before administrative tribunals to simplify the proceedings and speed up hearings.

Four principal criteria normally guide decision-makers in deciding whether or not to accept evidence:

- **Relevance:** The evidence must have a link with the case.
- **Reliability:** The evidence must be worthy of belief. For example, decision-makers might declare a document inadmissible because it is obviously a fake.
- **Necessity:** The use of this element of evidence rather than another must be necessary to reach a decision. For example, if 200 people witnessed the same event and one party wants to prove this event, it is not necessary to have all 200 people testify.
- **Fairness:** Allowing a piece of evidence must not create an injustice for the other parties. For example, it would be unjust to allow evidence against a party if it was obtained illegally by the other party.

For a piece of evidence to be allowed by a tribunal, it normally must meet these four criteria. If it does not, decision-makers have the power to refuse to allow it. In such a case, the evidence will not be taken into account by the decision-makers.

Decision-makers normally determine the admissibility of evidence during the hearing, when a party files the evidence. The decision on admissibility of evidence can also be made at the same time as the decision on the principal application. In such a case, decision-makers would specify in their decision the evidence that they relied on. They would also explain why they decided not to take into account certain evidence. Many decision-makers use the two methods at the same time, that is, the admissibility of evidence is partly determined during the hearing and partly determined in the decision on the principal application.

Finally, it is important not to confuse the admissibility of evidence with its probative value. Admissibility deals only with the possibility of submitting the evidence to the tribunal. Probative value deals with its degree of reliability or the quality of the evidence. Evidence may in fact be admissible even if it has a weak probative value.

### ***Objections***

The rules of evidence must be respected. When a party wants to file a piece of evidence, the other party can oppose it by means of an objection. To make an objection, a party simply needs to say “objection.” The decision-makers then allow the parties to argue the admissibility of the evidence and then the decision-makers decide whether the evidence can be admitted.

In certain cases, the decision-makers may themselves decide that the admissibility of certain evidence is problematic. This often happens when one or both parties are not represented by a lawyer and fail to make any objection.

As mentioned above, the decision on admissibility of evidence can also be made later, at the time of the final decision.

Many administrative tribunals do not require a party to say “objection.” They deal with these issues in an informal manner.

## ***Admission***

The parties can agree that certain elements of evidence that would normally be submitted into evidence in a certain way (for example, through testimony) can be admitted directly into evidence without the witness being obliged to testify. This is called proof by admission. Parties often make admissions regarding uncontested aspects of the case.

The parties also do this to speed up the hearing or, for example, to avoid having someone pointlessly come to file a document dealing with an uncontested element. For example:

Following discussions with the applicant, the respondent makes the following statement to the decision-maker:  
“If Mr. Jodoin was present at the tribunal today, the respondent admits that he would say he signed the contract on December 8, 2006, and that he would file this contract.”

Based on this admission, both the fact that Mr. Jodoin signed the contract and the contract itself would be admitted into evidence.

However, once a party has made an admission, it touches only on the admissibility of the evidence. By making an admission, the party is in no way admitting that the piece of evidence has any particular probative value.

## **11. The witnesses and the testimony**

Testimony consists simply of a person, the witness, informing decision-makers about the case.

### ***Subpoenas and the obligation to appear***

The parties normally decide what evidence they will present to the decision-makers. So, even though decision-makers of certain administrative tribunals have the power to summon witnesses themselves, it is up to the parties to decide whether they need to have a certain person testify or not.



Once a party decides to have a person testify, it is up to that party to summon the person and ensure he or she is present at the tribunal on the day of the hearing.

To do this, the party may decide to simply ask the witness to be present at the tribunal on the day of the hearing. This method works relatively well when the party knows the witness and the witness has voluntarily accepted to testify.

When the party does not know the person he or she wants to have testify or when the latter is reluctant to testify, it is preferable to oblige the person to be present (appear) at the tribunal. This is done by sending that person a document called a summons (or subpoena). The summons is an order from the tribunal to present oneself before the tribunal.

Summoned witnesses should realize that this is not a mere invitation or appointment; it is an order. Witnesses cannot avoid this order unless they have serious reasons, and even then they need the authorization of the tribunal. Failure to respect the order may constitute contempt of court. Furthermore, if witnesses fail to appear on the day of the hearing, it will be much easier for the party who summoned them to obtain a postponement if the party can prove that the witnesses had been sent a summons.

### ***Obligation to answer questions***

Once in the hearing room, witnesses are called to the witness box in the front of the room, before the decision-makers and the parties. The witnesses are then sworn in, examined, and cross-examined.

In certain situations, witnesses are reluctant to reveal certain information that might disadvantage them in some way. However, even if witnesses would rather keep certain information private, they do not have a choice. They must answer the questions put to them. However, if witnesses admit to a crime during their testimony, this testimony cannot later be used to file criminal charges against them. The *Canadian Charter of Rights and Freedoms* protects witnesses against the use of this testimony. However, this protection is not as strong as if the witnesses testified voluntarily without being summoned.

### ***Opinions of witnesses and expert witnesses***

“Ordinary” witnesses can always share their opinions on certain aspects of daily life, such as the temperature, a person’s age, or even someone’s general state (intoxication, mood, etc.). However, they do not have the right to give an opinion on more complex situations. Only expert witnesses have that right.

Expert witnesses are witnesses like any other, except that they are specialists in a specific area. Expert witnesses have the right to give the decision-maker their opinion regarding a situation, hypothetical or real, as long as it is in their area of expertise. It is the very reason for their presence before the tribunal.

The fact that a witness is an expert must be established before the tribunal by the party that summoned the witness. And this must be done before the expert testifies. The other party can accept that the witness is an expert but can also contest it. It will then be up to the decision-maker to decide whether the witness can be declared an expert witness or not, and if so, in what area of expertise.

For example, if an applicant wants to prove to the tribunal that his or her back is sprained, the applicant has to get a medical expert to come and say this. Before giving an opinion, the expert examines the applicant in advance of the hearing and carries out all necessary tests.

After reaching an opinion, the expert writes a report. If a party wants to have an expert testify, the rules of the administrative tribunal almost always require that the report be sent to the other parties and filed with the tribunal several days before the hearing. It is sometimes possible to have a report filed without the expert being called as a witness.

## **12. The decision**

The decision is the most important element of the procedures for the parties. After all, obtaining a decision is the whole point of going through all the other steps of the proceedings, especially for the applicant.

Once the parties have finished presenting their evidence and arguments, the solution is in the hands of the decision-makers. The decision-makers must go through all the evidence they have received. This is

the point at which the probative value of the evidence becomes important. The higher the probative value of a piece of evidence, the more importance it will have for the decision-makers.

For example, if certain evidence contradicts other evidence, the decision-makers must determine which evidence they will accept as true. The decision-makers must also determine if applicant have met their burden of proof. Decision-makers must also establish a “factual basis,” that is, the totality of facts that they consider proved.

The decision-makers then apply the applicable rules of law to this factual basis to reach their decision.

### **13. Enforcing a decision**

What happens if the decision-makers render a decision granting the applicant’s conclusions?

#### ***Voluntary execution***

Respondents may voluntarily respect the decision. This is called voluntary execution.

#### ***Forced execution proceedings***

If respondents refuse to respect the decision, applicants must resort to forced execution proceedings. These are measures aimed at forcing the respondents to respect the decision. Execution almost always requires the intervention of another tribunal (generally a superior court).

#### ***Seizures***

When respondents have to pay a sum of money to the applicants, the applicants can resort to the different types of seizure that exist. Seizure is a type of process by which applicants collect their money by taking and selling respondents’ belongings, by force if necessary. Applicants do not have the right to carry out the seizure themselves. Court bailiffs do this sort of work. The bailiff can seize goods (furniture, car, money, etc.), other property (house, chalet, etc.), or the person’s salary or income.

### ***Contempt of court***

When the decision orders respondents to do, or not do, something, failure to respect the decision can constitute contempt of court. This means that those who do not respect the decision can be ordered to pay a fine or sentenced to imprisonment.

## **14. Reconsideration, appeal, and judicial review**

An application for reconsideration is an internal mechanism where the administrative tribunal reviews its own decision. An appeal is a process by which a party can challenge the decision of the administrative tribunal before another tribunal. There is also judicial review, a recourse available in cases in which the decision-makers committed certain types of errors or a mistake that is considered to be serious.

### ***Application for reconsideration***

This is a mechanism whereby the law grants the administrative tribunal the power to review its own decision at the request of one of the parties.

The reasons that permit this type of application are provided by law. These reasons can be, for example, the discovery of a new fact or certain procedural defects.

It would then be up to another decision-maker from the same administrative tribunal to review the decision without a new hearing.

### ***Appeal***

Not all decisions of all administrative tribunals can be appealed. In fact, decisions of administrative tribunals are often final so it is rather rare to have an appeal of a decision. However, when an appeal is possible, the rules of the administrative tribunal provide for when and how to carry one out.

There are several ways of appealing a decision. In certain cases, it is enough to simply file a “notice of appeal” with the clerk of the appeal tribunal. This notice is similar to the motion to institute proceedings.

In other cases, it is necessary to ask the appeal tribunal for “permission to appeal” a decision. A hearing may be held on this subject.

Once a file is on appeal, the parties generally do not make their case before the appeal tribunal. Rather, the appeal tribunal makes a decision based on the evidence that was filed before the administrative tribunal. If the hearing before the administrative tribunal was recorded, a written version of this recording (called a transcript or stenographed notes) is normally filed.

The appeal tribunal has the task of deciding whether the administrative tribunal made errors in its decision. Such errors might concern the application of the law (an error of law), the determination of the factual basis (an error of fact), or even the two at the same time (mixed error of fact and law). The question is not whether the decision-makers of the appeal tribunal would have rendered the same decision as the administrative tribunal. Rather, it must be determined whether the decision-makers on the administrative tribunal made any errors in their decision.

If the appeal tribunal concludes that the decision-makers of the administrative tribunal did make an error, it can modify the decision or order a new hearing before the administrative tribunal.

There is also something called a *de novo* appeal, which involves presenting the case all over again before the appeal tribunal. In such a situation, the parties restart the trial from scratch and present their evidence and arguments again. The decision-makers make a decision based on this “new” evidence. The decision that follows can therefore be different from that of the administrative tribunal.

### ***Judicial review***

Judicial review, also called the “superintending and reforming power” of courts, is a means of annulling an administrative tribunal’s decision if it suffers from a certain type of error or a serious error. Only the superior courts and the Federal Court of Canada have this type of power.

This is an exceptional application. Without getting into the details of the application, there are three cases that normally allow for judicial review:

- The decision-makers did not have the right (the competence or jurisdiction) to deal with the case. The law grants the administrative tribunal the right to act in a specific area and sometimes even a specific territory. This is called its competence. If decision-makers deal with a case outside of its area of competence or its territory, a party can ask that the decision be annulled.
- The decision-makers did not respect the minimum rules of natural justice, which include the parties' right to present evidence, to cross-examine the witnesses, to be heard by the tribunal, to be informed of the hearing date, etc. These cases include situations in which either the decision-makers or tribunal is not sufficiently independent or impartial in relation to the government.
- The decision-makers made a serious error in the interpretation of the rules of law or the facts in the case.

The rules of certain tribunals can sometimes limit recourse to judicial review.

## **15. Alternative dispute resolution mechanisms**

Although this book deals with the workings of proceedings before administrative tribunals, it is also important to know that administrative tribunals increasingly favour the use of other methods. Such methods are faster, less costly, and just as effective as proceedings. They also cause less damage to relations between the parties. These methods are called “alternative dispute resolution.”

The vast majority of cases before administrative tribunals are settled using these methods, without a hearing. While parties do not have to use these methods, they now form part of the normal steps in a case before a tribunal.

Negotiation, conciliation, and mediation are the principal methods. Their aim is essentially to find a solution to the conflict that is satisfactory for both parties. It presupposes a willingness to settle the conflict

through compromise, with or without the help of external actors like a mediator or conciliator.

### ***Negotiation***

Negotiation involves finding common ground through discussion and compromise. It forms the basis of resolving a conflict. In fact, all the methods of conflict resolution find their origin in negotiation. Negotiations often take place before an application is filed, but they are always necessary once proceedings have started before an administrative tribunal. Negotiation can be carried out directly between the parties to the dispute or through their representatives.

### ***Mediation***

Mediation is a form of negotiation involving the intervention of a mediator, a neutral person whose task is to facilitate dialogue. A mediator plays an active role and can propose solutions to the parties.

### ***Conciliation***

Conciliation very much resembles mediation. Some people even consider the two almost synonymous. However, a conciliator plays a more passive role than the mediator and generally does not propose solutions, as a mediator would. The conciliator simply focuses on facilitating dialogue between the parties.





## GLOSSARY OF TERMS USED IN THE ADMINISTRATIVE JUSTICE SYSTEM

### A

**Abate, abatement.** Reducing or decreasing something. (*The tribunal ordered an abatement of rent.*)

**Act.** Law made by a provincial legislature or the federal parliament. (*The Divorce Act of Canada is the law that explains how to get a divorce.*)

*See also* Law; Statute; Regulation

**Adjourn, adjournment.** Delaying a hearing to a later time or place, whether temporary (for a certain amount of time) or final (forever). (*The hearing is taking longer than expected, so it is adjourned to next week.*)

*See also* Hearing; Preliminary motions

**Adjudicate, adjudication.** When a decision-maker resolves a dispute after considering the law and the evidence and arguments of the parties. (*The adjudication was delayed so a mediator could try to settle the dispute.*)

*See also* Adjudicator; Alternative dispute resolution; Decision; Decision-maker

**Adjudicative function.** Power to make a decision using adjudication. (*Administrative tribunals perform an adjudicative function when they resolve disputes between parties.*)

*See also* Adjudication; Adjudicator

**Adjudicator.** Official person who resolves disputes between parties. (*Members of administrative tribunals are adjudicators.*)

*See also* Adjudication; Decision-maker

**Admissible evidence.** Facts and things that a tribunal can consider when making a decision about a case. (*Louis is unhappy about the government's decision and asks a tribunal to reconsider it. The letter sent by the government to Louis is admissible evidence because it shows that the government refused to give him unemployment benefits.*)

*See also* Evidence; Rules of evidence

**Administrative tribunal.** Organization created by the government under an Act. An administrative tribunal acts like a court to handle disputes. (*The administrative tribunal responsible for residential tenancies handles problems between landlords and tenants.*)

*See also* Act; Dispute

**Affidavit.** A written statement made by a person under oath to a lawyer a commissioner of oaths, or a notary public, to be used as evidence. (*Philip swore an affidavit before his lawyer Miriam.*)

*See also* Affirm; Evidence; Oath; Perjury

### **Affirm, affirmation**

1. To promise to tell the truth when testifying as a witness or making an affidavit. (*Joe answered and affirmed he would tell the truth.*)

*See also* Affidavit; Testify; Testimony

2. When a decision is approved by an appeal court. (*The Superior Court affirmed the decision of the Board of Review.*)

*See also* Appeal

**Agent.** Person who represents another person and can act in their place. (*An agent who is not a lawyer can represent a party at a tribunal hearing, but a lawyer representing a party is called a counsel.*)

*See also* Counsel; Represent; Representative

**Agree, agreement**

1. Promises made by two or more people to each other to do something or to not do something. (*A lease is an agreement in which the landlord promises to rent to the tenant and the tenant promises to pay rent.*)
2. The document containing promises made by two or more people to each other to do something or to not do something. (*Sylvie gives the agreement she signed with her employer to the tribunal.*)

*See also* Contract; Settlement

**Allege, allegation.** A written or spoken statement about a fact. (*Sara claims that her roof leaks when it rains so she showed photos of the leaky roof to prove her allegation.*)

*See also* Evidence; Fact

**Alternative dispute resolution.** Different ways other than adjudication used to resolve disputes, including negotiation, conciliation, mediation, and arbitration. (*The parties were given a brochure on alternative dispute resolution.*)

*See also* Dispute; Settle; Settlement

**Amend, amendment.** Changing a legal document such as an application, pleading, contract, or a law. (*The parties agreed to an amendment to the lease to increase the rent.*)

*See also* Agreement; Contract; Law

**Appeal**

1. When a court checks a tribunal's decision to make sure it was correct. (*When an appeal is possible, it can be "as of right" [a party does not need permission to appeal] or "with leave" [a party must obtain permission to appeal].*)
2. A party who disagrees with a tribunal's decision may appeal the decision to a higher court. (*Decisions made by some tribunals cannot be appealed.*)

*See also* Appellant; Court; Respondent

**Appellant.** Party who appeals a decision. (*Emily appealed the tribunal's decision because she disagrees with it. Emily is the appellant.*)

*See also* Appeal; Party; Respondent

**Applicant.** Party who makes an application. (*Carla made an application to a tribunal for an order that a witness attend a hearing. Carla is the applicant.*)

*See also* Apply; Application; Party; Respondent

### **Apply, application**

1. A party's request made to a tribunal, asking the tribunal to order something. (*Carla made an application, asking a tribunal to order a witness to attend a hearing.*)
2. The document containing a party's request to a tribunal. (*An application contains the reasons for the request.*)

*See also* Applicant; Complaint; Claim; Motion; Respondent

**Arbitrate, arbitration.** A way to resolve disputes not using a court. (*In arbitration, a person called an arbitrator considers the law and the evidence and arguments of the parties and makes a decision to resolve the dispute.*)

*See also* Alternative dispute resolution; Arbitrator

**Arbitrator.** Neutral and fair person who ends disputes using arbitration. (*The arbitrator had the witness sworn in.*)

*See also* Adjudicator; Arbitrate; Arbitration; Neutral

**Argument.** Giving reasons to convince someone of something. (*During the hearing, the parties made arguments to persuade the tribunal that each was right and the other was wrong.*)

*See also* Closing argument; Hearing

**Arrears.** Something that has not been paid, but needs to be paid. (*Maria's rent is in arrears because she missed her rent payment last month.*)

**Award.** Decision made by a tribunal or an arbitrator to end a dispute between parties. (*The applicant was not happy with the award, but neither was the respondent.*)

*See also* Decision; Order

## B

**Bad faith.** Bad faith can mean many things: acting dishonestly, tricking a person, deliberately not doing what should be done, committing fraud, deliberately discriminating against a person, abusing power given by the government or the law, being unfair or unreasonable. (*The false reason the employer gave for the lay-off was evidence of the employer's bad faith.*)

*See also* Good faith

**Benefit.** Some payment given to a person by government or an employer. (*Jane's welfare benefit cheque was late and her mother's employment insurance benefit cheque was lost in the mail.*)

## C

**Causal connection.** When one thing makes another thing happen. (*There was a causal connection between Marco leaving the tap running and the bathroom floor flooding.*)

**Certified true copy.** Document guaranteed to be an exact copy of an original document. (*Mathew received a certified true copy of a tribunal's decision.*)

### Chairperson, chair

1. Person in charge of a tribunal. (*The tribunal's chairperson is chosen by the provincial government.*)
2. Person on a panel of a tribunal who has the final say in a decision. (*The chairperson decided in favour of the applicant.*)

*See also* Administrative tribunal

**Chronological order.** In order of time, from what happened first to what happened last. (*Antoine is making an affidavit to describe the car accident so he writes down what happened in chronological order.*)

*See also* Affidavit

**Claim, statement of claim**

1. To make a demand to a tribunal and the reasons for the demand. (*Mark claims \$2000 from Tina for firing him illegally.*)
2. Document containing a party's demand and the reasons for the demand. (*Mark filed a claim against Tina for \$2000 because she fired him illegally.*)

*See also* Claimant; Remedy

**Claimant.** Party who makes a claim. (*Mark is the claimant in the claim against Tina, who becomes the respondent.*)

*See also* Claim; Party; Respondent

**Closed hearing.** A hearing that is closed to the public and open only to the parties, their lawyers, agents, and witnesses, and the decision-makers and staff of a tribunal. Part or all of a hearing may be closed. The information related to a closed hearing may be confidential. A closed hearing can also be called an *in camera* hearing. (*A journalist cannot attend a closed hearing.*)

*See also* Confidential; Hearing; Public hearing

**Closing argument.** Argument made by a party to a decision-maker at a hearing after the parties have presented their evidence. In its closing argument, a party argues how the law and the evidence show that it is right and the other party is wrong. The party also states the decision it would like the tribunal to make. (*In written hearings, closing arguments are written down and given to the decision-maker.*)

*See also* Argument; Submission

**Code of conduct, code of ethics.** Rules on how to behave honestly, fairly, and respectfully; a tribunal may have a code of ethics for its staff and decision-makers (members). (*The code of ethics of the tribunal requires its decision-makers to withdraw from a case if they have a conflict of interest.*)

*See also* Conflict of interest; Impartial; Neutral

**Collective agreement.** Contract between an employer and a trade union (a group of employees who join together to negotiate their working conditions). (*A collective agreement is the result of negotiation between the employer and the trade union about wages and other working conditions.*)

*See also* Agreement; Contract

**Commission.** Organization created by the government to control or regulate certain types of public activities; sometimes a tribunal is called a commission. An administrative tribunal is often linked to a commission. A commission may have some decision-making authority. (*The Canadian Human Rights Commission protects civil rights and liberties.*)

*See also* Administrative tribunal; Regulate

**Commissioner.** Decision-maker who works at a commission. (*The commissioner adjourned the hearing.*)

*See also* Commission; Decision-maker

### **Compensation**

1. Something given to a person to make up for harm they suffered or for something they lost. (*Serena broke Gabriel's window. Gabriel asked Serena for compensation in the amount of money it cost him to fix the window.*)
2. Money paid to a person for working. (*Janet's compensation was increased so her annual salary is now \$40,000.*)

*See also* Damages; Remedy

**Complainant.** Party who makes a complaint. (*Annie is the complainant in a case against her employer, who is the respondent.*)

*See also* Claimant; Complaint; Party; Respondent

### **Complaint**

1. Request made by a party to a tribunal to order something. (*Annie filed a complaint of discrimination against Adam, asking for \$5000 in compensation.*)
2. Document containing a request made by a party to a tribunal that explains the reasons for the request. (*Annie's complaint explains that Adam discriminated against her because she is a woman.*)

*See also* Application; Claim; Complainant; Motion

**Conciliation.** A way to resolve disputes using a conciliator. (*An employer and a trade union may use conciliation to reach a collective agreement.*)

*See also* Alternative dispute resolution; Conciliator; Mediation

**Conciliator.** Neutral and fair person who helps parties resolve their dispute through conciliation. (*The conciliator met with each party separately first.*)

*See also* Conciliation; Negotiation; Neutral

**Confidential.** Private or secret information. (*Lisa tells her lawyer Martha about some problems with her landlord that she wants kept confidential.*)

*See also* Closed hearing

**Conflict of interest.** When a person has a personal connection to the dispute or the people involved in the dispute and may not be able to make a neutral and fair decision. (*Angela's neighbour is the adjudicator for her case so he may have a conflict of interest and should withdraw from the case.*)

*See also* Code of conduct; Code of ethics; Impartial; Neutral



**Consent.** Give permission or agree. (*Karim consents to try mediation to resolve his dispute with a classmate.*)

*See also* Alternative dispute resolution; Mediation

**Contest.** To be against something; to dispute something. (*Peter has decided to contest a tribunal's decision by appealing it.*)

*See also* Appeal; Dispute; Response

### **Contract**

1. Promises made by two or more people to each other to do something or not do something. (*Monica signed an employment contract with Irene for her to work as Monica's assistant.*)
2. Document containing promises made by two or more people to each other to do something or not do something. (*Irene filed the contract as evidence at the hearing.*)

*See also* Agreement; Settlement

### **Costs**

1. Money spent by a person to have a case heard by a tribunal, including fees paid to the tribunal and some money paid to a witness and a lawyer. (*Jane, the applicant, was ordered to pay costs to Raj because Jane had acted in bad faith.*)
2. Money that a tribunal spent to handle a case. (*The tribunal ordered Jane to pay the tribunal's costs because her bad faith had delayed the hearing.*)

*See also* Bad faith

### **Counsel**

1. Lawyer representing a party before a tribunal. (*Counsel for the respondent asked for a short adjournment.*)
2. To give advice to someone. (*Hal was able to counsel Michael not to lose his temper.*)

*See also* Agent; Represent; Representative

**Cross-examination.** When a witness who is called by one party is asked questions by another party, after the witness has been questioned by the party who called him or her, to test if the witness is telling the truth. (*Bob called Maya as a witness so Guy asked Maya questions in cross-examination.*)

*See also* Examination; Hearing; Re-examination; Witness

**Court.** Organization that handles disputes between people according to the law. A decision made by a tribunal may be appealed to a court or reviewed by a court. (*The appeal of the decision of the Rent Commission had to be taken to the Superior Court.*)

*See also* Adjudication; Appeal; Decision-maker; Judicial review; Law

## D

**Damages.** Money given to a person to make up for a loss or for harm done to them. (*Irina broke Robert's computer so she has to pay him \$1500 in damages to compensate him.*)

*See also* Compensation; Remedy

**Decide, decision.** When a person makes up their mind about something; solving a dispute by saying what is to be done. (*After the hearing, the tribunal's decision was that Robin must pay damages to Megan.*)

*See also* Adjudication; Award; Oral decision; Written decision

**Decision-maker.** Person responsible for making decisions that end disputes between people; includes members of tribunals, judges at courts, and arbitrators. (*As the decision-maker, the Appeal Panel Chairperson cannot always please the people on both sides of the dispute.*)

*See also* Adjudicator; Chair; Chairperson; Decision; Member

**Deduction.** Money that is taken away or held back for something. (*The employer made deductions from Sal's pay cheques for union dues and taxes.*)

**Default**

1. Not doing something that had to be done under the law or a contract. (*Naomi missed a few mortgage payments, so she is now in default with the bank.*)
2. Missing a hearing at a tribunal or not providing documents that are needed. (*Sophie did not to go to the hearing of her case, so the tribunal made a default order against her.*)

*See also* Agreement; Contract; Law; Obligation

**Defence.** *See* Response

**Defendant.** *See* Respondent

**Diligence**

1. Showing the necessary care and attention. (*Doing something with diligence means doing it carefully.*)
2. Doing something quickly and efficiently. (*The lawyer sent the notice with diligence.*)

**Disclose, disclosure.** Showing or giving information or some thing to another person so they can prepare for the hearing. (*Zara must disclose an affidavit made by a witness to the other parties.*)

*See also* Affidavit; Confidential; Exhibit

**Disclosure of evidence.** When parties show or give copies of their evidence to each other before a hearing. (*The tribunal rules require disclosure by the parties of their written evidence to each other.*)

*See also* Disclose; Disclosure; Evidence; Hearing; Preliminary motion

**Discontinue.** Giving up something; putting an end to something. (*Pascal and Lina settled their dispute so they want to discontinue the case.*)

*See also* Settlement

**Discretion.** Freedom given to a decision-maker, by the law, to decide how to manage the processing of a complaint or to resolve a dispute. (*The Appeal Court said the question was decided in the arbitrator's discretion.*)

**Discriminate, discrimination.** When a person or a group of people is treated differently from other people because of their personal characteristics such as their race, gender, sexual orientation, or religion. (*It is discrimination for an employer not to hire Roman Catholics.*)

*See also* Prejudice

### **Dismiss, dismissal**

1. To fire an employee. (*The employer dismissed the employee without any explanation.*)
2. To refuse to deal with someone or something; to end something, like a hearing. (*The tribunal dismissed her claim because of lack of evidence.*)

### **Dispose of the complaint on the merits, disposition of the complaint on the merits**

Handling a case by reaching a decision after considering the issues. (*The tribunal disposed of the complaint on the merits and not on the basis of technical problems with the complaint form.*)

*See also* Adjudication; Issue in dispute; Merits

### **Dispute**

1. To argue against or to question. (*Derek disagreed with a complaint made against him, so he disputed it.*)
2. A quarrel or disagreement between people or organizations. (*The dispute came up between Gerald and the government because the government refused to issue a parade permit to him.*)

**E**

**Elapse.** To let pass by or go by, like the passage of time. (*Over two weeks have elapsed since the hearing.*)

**Electronic hearing.** Hearing held by a telephone conference call or a video conference. (*The parties, their lawyers, agents, and witnesses all participated in the electronic hearing by video conference.*)

*See also* Oral hearing; Written hearing

**Enforce a right.** To make sure that a right will be respected. (*The tribunal can provide remedies to enforce a right that is being interfered with.*)

*See also* Remedy; Right

**Evidence.** Information or things presented to a tribunal to prove a fact; these can include such things as a videotape or documents, affidavits, visual demonstrations, witnesses, and expert testimony. (*There was no evidence brought to support the main claim.*)

*See also* Admissible evidence; Allegation; Expert evidence; Rules of evidence; Testimony

**Ex parte.** When a party makes a request at a hearing when the other party has not been informed about the hearing or does not attend the hearing. (*Helen, the respondent, asked for an ex parte hearing.*)

*See also* Default; Notice; Proof of service

**Examination, direct examination.** When a party calls a witness and asks that witness questions to have the witness describe what she or he knows about the facts of the case as evidence. (*Bob called Maya as a witness and conducted an examination of Maya.*)

*See also* Cross-examination; Re-examination; Testimony

**Exhibit.** Object or document that is put up as evidence; exhibits are numbered, like Exhibit 1, Exhibit 2, etc. (*The tribunal accepted the contract as Exhibit 1, the photo as Exhibit 2, and the videotape as Exhibit 3.*)

*See also* Admissible evidence; Evidence; Rules of evidence.

**Expert evidence.** Opinion or information given by an expert witness about something proven to have happened in a case, based on the expert's special knowledge or skill. (*The expert evidence supported the claimant's position.*)

*See also* Admissible evidence; Expert witness.

**Expert witness.** Someone with special knowledge, training, skill, or experience who can help a decision-maker understand the evidence in an area in which they are expert. (*The expert witness was a doctor who could give an opinion about how long it would take the employee to recover.*)

*See also* Expert evidence; Witness

**Expropriate, expropriation.** When a government takes a person's property away from them for a public purpose, such as building a road or an airport, etc. (*The government expropriated William's land.*)

*See also* Compensation

## F

### Fact

1. A truth that a person knows from his or her own experience of it.
2. Something that can be proved through evidence to exist or to have happened. (*The fact is that Nadia started her new job on March 1, 2006, and she can prove this by showing her first pay cheque that indicated her first day of work.*)

*See also* Allegation; Evidence

### Fees

1. Money paid for services. (*The fees were paid to the lawyer for the work she did at the hearing.*)
2. Money paid to register something or to put in documents at a tribunal or court. (*The fees for service of a summons by the agent are \$25.*)

*See also* File

**File**

1. Something like box, envelope, or folder holding information and documents for each case brought to the tribunal. (*The case file contains documents such as the application, written evidence, notices, and so on.*)
2. To give a document or an object to the staff of a tribunal or the member at a hearing. (*Eleanor files an application at a tribunal.*)  
*See also* Admissible evidence; Evidence

**G**

**Good faith.** Acting honestly and fairly; doing something with sincere intentions; having an honest reason for doing something. (*The employer's argument that there was cause for dismissing the employee was made in good faith.*)

*See also* Bad faith

**Grievance**

1. When a person thinks that something is illegal or unfair or is denied a right. (*The claim was filed because of John's grievance against his mother.*)
2. A disagreement between an employer and employees about a collective agreement or with a single employee over rights under the agreement. (*The employee filed a grievance.*)  
*See also* Collective agreement; Dismiss; Right

**Grounds.** Reasons for doing something; reasons behind something. (*Ellen asks for adjournment of the hearing on the grounds that her main witness is in the hospital.*)

**H**

**Hearing.** When the parties and decision-maker meet formally to hear or read the parties' evidence and arguments; there are oral hearings, written hearings, and electronic hearings, public hearings, or closed hearings. (*During the first day of the hearing, the parties' counsel made opening statements of their cases.*)

*See also* Closed hearing; Electronic hearing; Oral hearing; Public hearing; Written hearing

**Hearsay.** When a witness gives information about something that she did not see herself and she only knows that thing because someone else told her about it or because someone else wrote about it. (*Anna wanted to testify about a work accident but it would be hearsay because she did not see the accident herself.*)

*See also* Evidence; Testify; Witness

**I**

**Impartial.** Being fair and neutral and not biased or prejudiced; tribunals must have no opinion before they hear the evidence and arguments of both parties to make a decision. (*Decision-makers are not impartial if they do not like one of the parties.*)

*See also* Code of ethics; Neutral

**Incident.** An event; something that happens. (*Carlos was injured at work in an incident involving three others.*)

**Independent.** Someone who is not under the control of another person and is free to make decisions on his or her own. (*Tribunal members are independent of government when they make their decisions.*)

*See also* Impartial; Neutral

**Infringement of rights.** When someone's rights have been violated; something that interferes with a person's rights. (*The new regulations are an infringement of rights of the co-op residents.*)

*See also* Right



**Interim order**

1. Order made by a decision-maker before the time of the final decision. (*A commissioner gave an interim order requiring the parties to disclose their evidence.*)
2. Order that only lasts for a certain amount of time or until some event happens. (*The adjudicator's interim order delayed the award until the appeal of the decision has been dealt with.*)

*See also* Order; Stay

**Investigate, investigation.** Carefully trying to find out the truth about something. (*The employer had carried out an investigation to learn more about the claims.*)

**Issue in dispute.** Things the parties disagree about, either about the facts of what happened or about what the law says about the situation. (*A tribunal must resolve all the issues in dispute in its decision.*)

*See also* Dispute

**J**

**Judicial review.** When a court checks over a decision made by a tribunal to make sure the tribunal did not go beyond what it is allowed to do under the law or did not fail to do what it should have done.

*See also* Appeal; Jurisdiction; Mandate of an organization; Reconsideration; Review; Stay

**Jurisdiction.** Power of a tribunal to deal with a dispute based on the type of dispute and the geographical area where the dispute happens. A tribunal gets its jurisdiction from an act passed by the government. (*A human rights tribunal hears human rights disputes about rental properties but does not have jurisdiction to hear disputes over rent between landlords and tenants.*)

*See also* Act; Judicial review; Mandate of an organization; Preliminary motion; Reconsideration

**L**

**Law.** The rules made by the government or courts that govern society and give rights and obligations to people. (*The Criminal Code is a law of Canada.*)

*See also* Act; Legislation; Obligation; Regulation; Right; Statute

**Lawyer.** Person who is trained and authorized to give legal advice to people. (*Lawyers explain the law and advise people more than they go to court.*)

*See also* Counsel; Law; Represent; Representative

**Leading question.** Type of question asked to a witness by a party that suggests or contains the answer that the party wants the witness to give and can usually be answered with a “yes” or a “no.” (*When Keira asked, “Is it true that the window was broken around 5 p.m.?” she is asking a leading question because her question contains the information she wants from Greta.*)

*See also* Cross-examination; Examination; Open question; Re-examination

**Leave to appeal.** Permission to appeal a tribunal’s decision. (*Fiona must get leave to appeal from a court before she can appeal a tribunal’s decision.*)

*See also* Appeal

**Legal**

1. Related to the law or created by the law. (*The agent explained the purchaser’s legal obligation.*)
2. Permitted by the law. (*The parade was not a legal activity because the permit had been refused.*)

**Legislation.** Type of law made by the government; statutes and regulations. (*The Divorce Act is legislation that deals with divorce.*)

*See also* Act; Law; Regulation; Statute

**Liabe.** When the law says that someone is responsible to another person for a loss or injury to that person, because of something they did or did not do. (*The company was liable for the accident because they knew the equipment needed to be serviced.*)

*See also* Law; Liability

**Liability.** When someone has an obligation to do something or to not do something under the law. (*People who sign a contract are taking on a liability to each other under the contract.*)

*See also* Contract; Damages; Liable; Obligation

## M

**Mandate of an organization.** Activities that an organization must carry out; a tribunal can do only the things that the law requires it to do. (*The Labour Relations Board cannot handle issues that are outside the mandate of the organization.*)

*See also* Judicial review; Jurisdiction; Reconsideration

**Mandatory.** When something is required to be done. (*It is a mandatory requirement to serve documents by registered mail.*)

**Mediation.** One way to settle disputes; a person called a mediator helps the parties work out a solution to their dispute. A meeting with a mediator may also be called a settlement meeting or a settlement conference. (*Before filing a grievance, the parties decided to try mediation.*)

*See also* Alternative dispute resolution; Conciliation; Mediator; Settlement

**Mediator.** Neutral and fair person who helps people talk through and solve a problem without taking sides. (*The mediator first met with each side alone to hear their stories.*)

*See also* Arbitrator; Impartial; Mediation; Neutral

**Member.** Person who holds hearings and makes decisions at an administrative tribunal. (*Your file has been assigned to a member of the tribunal.*)

*See also* Adjudicator; Administrative tribunal; Decision-maker

**Merits.** Real issues in the application, complaint, claim, or appeal. (*This decision was made on the merits and not for any technical reason.*)

*See also* Dispose of the complaint on the merits

**Mitigate.** Reducing or limiting harm or a loss. (*Mike is suing his employer for firing him illegally but he should look for a new job to mitigate his losses.*)

**Monetary award.** Decision of a tribunal giving money to a party. (*Mike expects to receive a monetary award, but he cannot wait for that.*)

*See also* Award; Compensation; Damages

**Monetary remedy.** Decision that a tribunal can make that gives money to a party. (*Alicia got \$6000 in damages as a monetary remedy, plus she got her job back.*)

*See also* Award; Compensation; Damages; Remedy

**Motion.** Request made by a party to a tribunal, asking the tribunal to order something. A motion can be written or spoken at a hearing. (*Kasper makes a motion for disclosure of evidence at the hearing.*)

*See also* Disclosure of evidence; Interim order; Moving party

**Moving party.** Party who makes a motion, meaning they request something from the tribunal. (*It was Kasper's motion for disclosure of evidence, so Kasper is the moving party.*)

*See also* Motion; Party

**N**

**Negotiate, negotiation.** When people talk and compromise to settle a dispute or solve a problem. (*Hugo and his landlord Veronica don't agree about the rent for next year so Hugo suggested negotiation as a way of finding an amount of rent acceptable to both of them.*)

*See also* Agreement; Alternative dispute resolution; Contract

**Neutral.** Not biased or prejudiced. (*Decision-makers at tribunals must be neutral.*)

*See also* Arbitrator; Code of conduct; Code of ethics; Impartial; Mediator

**Non-monetary remedy.** A decision by a tribunal that gives the winning party something other than money. (*Lia wants only a non-monetary remedy from the tribunal, because she asks only for an order to evict her tenant Tania for not paying rent.*)

*See also* Award; Monetary award; Monetary remedy; Order; Remedy

**Notice**

1. When someone gets told about something by someone else who writes or speaks to them about it. (*Milan sent his landlord Mitch a letter so Mitch has received notice that urgent repairs are needed.*)
2. A notice is a document that informs a person about something happening at a tribunal that they need to know about. (*Tran receives a notice of hearing, which tells him to attend a hearing at the tribunal at 10 a.m. on December 13, 2007.*)

*See also* Ex parte; Default; Notice of motion; Notification; Proof of service

**Notice of motion.** Document informing a party about a request that will be made to the tribunal. (*The notice of motion that Dom received tells the type of request, the order asked for, the date, time, and place of the hearing of the motion.*)

*See also* Interim order; Motion; Notice

**Notify, notification.** Informing a person about something. (*The tribunal asked for proof that Jake received notification of the hearing.*)

*See also* Notice

## O

**Oath.** How a person promises or swears to tell the truth when giving testimony or making an affidavit. (*Adele took an oath and swore that her affidavit was true.*)

*See also* Affidavit; Affirm; Perjury; Testify; Witness

**Objection.** When a party opposes certain evidence presented by the other party or the way in which the other party is proceeding with its evidence. (*Bernice's witness has been talking about something not connected to the case so Laura gets up and says, "Objection, this is not relevant."*)

*See also* Admissible evidence; Evidence; Rules of evidence

**Obligation.** A duty created by the law or something that has to be done. (*The employer has an obligation to do what the tribunal ordered it to do.*)

*See also* Mandatory

**Omit, omission.** Not doing something that a person is required to do by law; a person may be held liable for their omission. (*Drivers who don't stop at red lights can be held liable for their omission.*)

**Open question.** Style of question asked to a witness, one that does not suggest or contain the answer that the party wants the witness to give. (*Rachel wants her witness to describe how Rachel was injured so she used the open question, "What happened on the morning of February 10, 2006?" instead of the closed question, "Did the broken machine injure me at work on February 10, 2006?"*)

*See also* Cross-examination; Examination; Leading question; Party; Re-examination; Witness

**Opening statement.** What a party says at the beginning of a hearing, before giving their evidence, to explain the issues in dispute and the evidence that they will have. (*In his opening statement, Harry explained the other kinds of evidence he would present.*)

**Oral decision.** A decision that is spoken aloud by a decision-maker at the end of a hearing, instead of being written out later. (*The tribunal was able to deliver an oral decision immediately.*)

*See also* Decision; Hearing; Written decision

**Oral evidence.** Answers given by a witness in testimony at a hearing. (*The complainant's mother is in hospital and not able to give oral evidence.*)

*See also* Affidavit; Cross-examination; Examination; Re-examination; Testimony; Witness

**Oral hearing.** When the parties, their lawyers, and witnesses go to the tribunal in person to present their case in a formal meeting. (*An oral hearing was held in August and written arguments were provided in September.*)

*See also* Closed hearing; Electronic hearing; Oral hearing; Public hearing; Written hearing

**Order.** How a tribunal declares that something must be done. An order can be final or interim. (*The tribunal ordered an employer to get safer equipment for its employees and also required that the order be posted in the worker's lunchroom.*)

*See also* Compensation; Damages; Decision; Interim order; Redress mechanism; Remedy; Restitution

## P

**Pain and suffering.** A type of damages that is money given to a party for experiencing emotional problems (pain, fear, etc.) after being harmed by the respondent. (*An award for pain and suffering is not a punishment but must equal the misery.*)

*See also* Damages; Remedy

**Party, parties**

1. Person or organization, company, or government agency in a dispute that a tribunal will handle, including the applicant or a claimant, a complainant or appellant and respondent. Other participants such as witnesses, lawyers, or agents are not parties. (*Lucie is an applicant and Javed is a respondent so they are both parties in this case.*)
2. Person or organization that made a contract or an agreement with another. (*Pierre and Jim are the only parties to the contract.*)  
*See also* Agreement; Appellant; Applicant; Claimant; Complainant; Contract; Respondent

**Perjure, perjury.** A lie told by a person under oath (written in an affidavit or spoken while giving testimony). (*While testifying, Vincent lied and committed perjury.*)

*See also* Affidavit; Affirm; Oath; Testimony

**Pre-hearing conference.** A meeting of the parties and the tribunal or mediator before the formal, main hearing of the case to decide on the issues in dispute, to set dates for steps like disclosure of evidence, and to set the length of time needed for the hearing. (*At the pre-hearing conference, the parties were actually able to settle their disagreement.*)

*See also* Disclosure of evidence; Hearing; Issue in dispute; Mediator; Settlement

**Prejudice**

1. Injury or harm.
2. Not being able to act on a right.
3. Bias: agreeing with one side over another without good reasons. (*Ali suffered prejudice [1] because he lost his job when he was in an accident. His case was then again prejudiced [2] because he was not able to take his claim to court after a member of the Workers' Compensation Tribunal made a decision against him that was based on racial prejudice [3].*)

*See also* Code of ethics; Discrimination; Impartial; Neutral; Right



**Preliminary motion.** Request made to a tribunal before the hearing starts, on preliminary issues or preliminary matters. Preliminary motions can also be called preliminary applications or interim motions. (*The respondent's preliminary motion challenged the jurisdiction of the tribunal.*)

*See also* Adjournment; Disclosure of evidence; Interim order; Jurisdiction; Motion

**Procedure.** Steps to take and documents to use for a case at a tribunal. (*The rules of procedure tell how to send notices to other parties.*)

*See also* File; Notice; Rules of procedure, rules of practice and procedure; Time limit

### **Proceeding**

1. The case being taken through the steps at a tribunal.
2. The activity in a case at a tribunal. (*There has been a motion for adjournment of this proceeding.*)

**Proof of service.** An affidavit or receipt that confirms that another document was served to a witness or a party and tells when and how the document was served. (*The proof of service shows that the notice of motion was served on the respondent on Monday, December 11, 2007, by hand delivery.*)

*See also* Notice; Notice of motion; Serve

**Provision.** A part of a law, or a regulation, or a contract, a will, or other legal document. A provision can also be called a clause, paragraph, section, article, or term. (*The respondent claims that this provision of the Act violates the Charter of Rights.*)

**Public hearing.** Hearing that the public can attend or find out about. The public means people other than the parties, their lawyers, agents or witnesses, and the decision-maker and staff of the tribunal.

*See also* Closed hearing; Hearing

**Q**

**Quasi-judicial.** Almost like a judge or court of justice. (*Tribunals are called quasi-judicial because they act like courts when they resolve disputes.*)

*See also* Adjudication; Decision

**R**

**Reconsideration.** When a tribunal reviews its own decision, so that it can check if the decision is correct. (*Reconsideration is sometimes called reopening or rehearing.*)

*See also* Appeal; Judicial review; Review

**Redress mechanism.** A way to help a person who suffered harm. (*The tribunal considered what redress mechanism was available to it.*)

*See also* Compensation; Damages; Remedy; Restitution

**Re-examination.** Questioning a witness again, after cross-examination of that witness, about new things talked about during cross-examination. (*After Guy is done with cross-examination, Bob's re-examination of the witness was meant to let her explain some answers she gave during cross-examination.*)

*See also* Cross-examination; Examination; Testimony; Witness

**Regulate.** Making rules and enforcing them to control some activity. (*The Milk Board regulates the sale of milk products.*)

*See also* Law; Regulation

**Regulation.** Rules made to provide detail to statute law; each Act has its own regulations. (*A regulation can also be called an order, rule, form, or by-law.*)

*See also* Act; Law; Legislation; Regulate; Statute

**Relevant evidence.** Fact or thing linked to an issue in dispute, relevant because it helps prove that something happened or didn't happen, or that something exists or doesn't exist. (*The doctor's report is relevant evidence that shows when Julia became sick.*)

*See also* Admissible evidence; Rules of evidence

**Remedy.** To correct a situation or make it good again: a way to put right or help out a person who has been injured or harmed, or to make sure that a person's rights will be respected or that something does not happen again. (*The tribunal ordered Christina to leave her apartment because she has not paid rent for the last few months, which was the remedy Betty had asked for.*)

*See also* Compensation; Redress mechanism; Restitution;  
Right

**Render a decision.** To make a decision and publish it to the parties or the public. (*The tribunal promised to render a decision before the end of the month.*)

*See also* Adjudicate; Arbitrate; Decide

## Represent

1. To speak or act in the place of another person. (*Farah, an advocate, represents Joseph at the hearing.*)
2. To claim something about a fact. (*Counsel for the applicant represented to the tribunal that the applicant had been illegally fired.*)

*See also* Agent; Allege; Allegation; Counsel; Fact; Lawyer;  
Representative

**Representative.** Person who acts for another person. (*Margaret's lawyer Alex is her representative and all correspondence goes to him.*)

*See also* Agent; Counsel; Lawyer; Represent

**Request.** To ask for something. (*Guy requested the tribunal adjourn the hearing.*)

*See also* Application; Motion

**Respondent.** Person against whom an appeal, an application, a complaint, or a claim is made, and who must respond or answer to the appeal, application, complaint, or claim. (*Marcus filed a complaint against Bridget, so Bridget is the respondent.*)

*See also* Appellant; Applicant; Claimant; Complainant; Party

**Responding party.** Person who did not bring the case but is affected by it. (*Zoë asked the tribunal to make Laila disclose her evidence. Laila becomes the responding party for this one motion.*)

*See also* Motion; Moving party

### **Response**

1. Part of the hearing when a respondent presents evidence and arguments against the other side. (*After hearing the claimant's evidence, the tribunal started to hear the response's evidence.*)
2. Document containing the respondent's facts and arguments. (*A party must file a response after being served with a claim.*)
3. Legal concept that justifies behaviour that would otherwise be illegal. (*The response explained why the person was fired without any warning. This is also called defence of cause.*)

*See also* Argument; Evidence; Hearing; Respondent

### **Restitution**

1. When a person returns something that they should not have had in the first place. (*Jared wrongly reported his work hours so he had to repay Rose \$100 to make restitution.*)
2. Giving something to a person to make up for their injury or a loss. (*The tribunal ordered and Andrew received \$500 in restitution.*)

*See also* Compensation; Damages; Redress mechanism; Remedy

**Review.** To check over something to make sure it is correct, or to reconsider it, such as when a tribunal may check its own decision, or a court considers a decision of a tribunal. (*The decision was reviewed by a new panel of members.*)

*See also* Appeal; Judicial review; Jurisdiction; Reconsideration

**Right.** A liberty or privilege that the law says a person can do or have. (*You may have the right to be represented by a lawyer at a tribunal, but you may not have the money for it.*)

*See also* Law

**Rules of evidence.** A set of rules that a tribunal uses to figure out if some fact or thing can be accepted for its consideration: Is it relevant, reliable, necessary, and fair? (*The lawyers started arguing over the rules of evidence and how they applied to admitting the store receipt.*)

*See also* Admissible evidence

**Rules of Procedure, Rules of Practice and Procedure.** Rules containing the steps to take and documents to use for a case at a tribunal. (*The Rules of Procedure indicate the time limit for asking the tribunal to review a decision.*)

*See also* Notice; Procedure; Time limit; Reconsideration

## S

**Serve.** To deliver, mail, or hand over documents to someone according to the rules of procedure that apply to the tribunal. (*The tribunal ordered the documents to be served by registered mail to the respondent's last known address.*)

*See also* Notice; Proof of service

**Settle, settlement.** Agreement ending a dispute; it is usually written down and signed by the parties. (*With the help of a mediator, Edith and Ivan found a solution to their dispute and reached a settlement.*)

*See also* Agreement; Alternative dispute resolution; Conciliation; Mediation; Negotiation

**Sever.** To divide something or break it up into parts. (*Janet's application to the tribunal deals with two different, unrelated respondents so the tribunal decided to sever the application, so that each can be dealt with separately.*)

*See also* Application; Parties

**Speculate, speculative.** When something is not practical or it is just a guess because some information is missing. (*The applicant's actual costs are only speculative at this time, so I am going to adjourn the hearing until he can bring in his receipts.*)

**Statute.** A law made by the government, often called an Act. (*The Divorce Act is a statute.*)

*See also* Act; Legislation; Law; Regulation

**Stay.** To suspend or put off until later, such as a stay of a decision during an appeal or a stay of a case forever. (*Tammy applied to stay the decision because she does not want to have to follow the decision until the court finishes its review.*)

*See also* Adjourn; Appeal

### **Submit**

1. To hand in or give something. (*Aaron hurried to submit his response to the tribunal.*)
2. When a party tells a decision-maker of its opinion about something; can be a written submission. (*During the hearing, Gio submits that his employer discriminated against him.*)

*See also* Argument; Hearing; Response; Submission

**Submission.** Argument made or position taken by a party during a hearing; it can be written. (*My lawyer made a submission on how the new law should apply to my case.*)

*See also* Argument; Closing argument; Hearing

**Substantial prejudice.** Serious harm or injury or interference with a right. (*The tribunal allowed Brian to file his complaint late because the other parties would not experience substantial prejudice by the late filing.*)

*See also* Prejudice; Time limit

**Substantiate.** To show evidence to prove something. (*Mira showed the dates in her lease agreement to substantiate that her lease was for one year.*)

*See also* Evidence

## Summons

1. A summons is a written order that tells a person to show up at a tribunal; it can tell a person to bring documents or other things to the tribunal. (*Agatha will be a witness at a hearing so she received a summons that tells her when to show up for the hearing next month.*)
2. To serve someone with a summons. (*Agatha was summoned to appear next Monday at 9 a.m.*)  
*See also* Hearing; Order; Serve

## T

**Testify.** To take an oath and give oral evidence in a hearing. (*Josie asked Tia to testify at the hearing.*)  
*See also* Expert witness; Testimony; Witness

**Testimony.** Answers given by a witness at a hearing. (*Tia's testimony lasted about an hour.*)  
*See also* Cross-examination; Examination; Re-examination; Witness

**Time limit.** Amount of time person has to do something; also, a deadline. (*Corinna has a time limit of 60 days to appeal a decision.*)  
*See also* Procedure; Substantial prejudice

## V

### Void

1. When something is not legally valid, meaning it has no effect under the law. (*Ian and Sandra signed a contract that turned out to be void.*)
2. To declare that something is not legally valid and has no effect under the law. (*The tribunal decided to void a notice sent by Patricia to Malik.*)  
*See also* Contract; Legal; Notice

**Voluntary.** Choosing to do something; not being forced to do something. (*Joanne's decision to take back her accusation against her supervisor was voluntary.*)

*See also* Consent

## W

**Witness.** Person who knows something about a case and is called to a hearing to answer questions under oath. (*As a witness at the hearing, Courtney will testify about Martin's accident.*)

*See also* Affirm; Cross-examination; Evidence; Examination; Oath; Re-examination; Testimony

**Written decision.** The tribunal members' written explanation of their ruling, including any orders and remedies in it. (*It is our practice to send the parties the written decision within a month after the hearing takes place.*)

*See also* Decision; Oral decision; Order; Remedy

**Written hearing.** Type of hearing in which the decision-maker examines written evidence and arguments of the parties to make a decision about their dispute. Written hearings are sometimes called paper hearings. (*The written hearing has not taken place because the written arguments were late due to a snowstorm.*)

*See also* Electronic hearing; Hearing; Oral hearing



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