ADMINISTRATIVE TRIBUNALS IN CANADA

Plain-Language Guide for People with Low Literacy Skills

April 2007

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The reason for this guide*

Every day, administrative tribunals handle thousands of files.

These files involve people.
These people are going through difficult situations.

Many of these people have trouble reading.
There are a lot of things to read at a tribunal.
It is hard for people who have trouble reading to defend their rights.

That is why we wrote this guide.
It is to help people understand how administrative tribunals work.

There are hundreds of administrative tribunals in Canada.
We cannot explain everything in this guide.
We tried to simplify the information.
The most important information is here.
If you want more information, you have to ask at the tribunal.

We hope that this guide will be useful for you.

Enjoy!

* Please note that a more complete version of this text is attached.

What is a tribunal?

Tribunals handle cases given to them based on rules of law. Tribunals are useful because they settle conflicts between people.
They settle the conflicts of people who cannot agree with each other using negotiation or mediation.

Decisions at a tribunal are made by a decision-maker.

What is an administrative tribunal?

Administrative tribunals are a type of tribunal.
They were created to provide justice between citizens and the government.
Many bodies act as administrative tribunals.
But there are differences between them.

Every administrative tribunal specializes in an area.
For example: labour relations, alcohol permits, employment insurance, human rights.
There are many of them.

In Canada, there are hundreds of different administrative tribunals.
Each day, administrative tribunals handle many cases.
In some administrative tribunals, the cases are very short.
They take a few months to settle.
Other administrative tribunals handle cases that are a lot more complicated.
These cases can take years.

The law says that all tribunals must be independent from the government.
An administrative tribunal and its decision-makers must be neutral.
They cannot take sides.
They cannot have an interest or bias in a case or towards the people in the case.

Even though the government pays the decision-makers, the decision-makers must make decisions that they think are right, without being scared of losing their job.

Administrative tribunals can settle all sorts of conflicts.
Some administrative tribunals settle conflicts between the government and citizens.
One example is the Immigration and Refugee Board of Canada.
It makes decisions about immigrants and refugees in Canada.

Other administrative tribunals settle conflicts between citizens.
One example is the Landlord and Tenant Board of Ontario.
It settles conflicts between landlords and tenants.

Administrative tribunals have rules on how to present evidence.
These are called rules of evidence.
They also have rules of procedure.
Rules of procedure are about what you do if you want to be heard by the tribunal.
In general, the administrative tribunal sets its own rules of evidence and procedure.

The office of the tribunal

The office of the tribunal makes sure the tribunal works properly.
Often, it is a service counter in the building of the tribunal.
This is where all the tribunal's decisions are kept.
This is the place where you hand in papers for your file.
It is also where you find out how to do things.
You will find useful forms at the office.
You go there to get your procedures stamped.
This means you pay to have the original procedure stamped.

There are administrative tribunals that act in a certain territory, like in a province or all of Canada.
These tribunals do not always have an office in every region.
The decision-makers move from one place to the other to hold hearings.

When the tribunal sends out official papers, it is normally the office that sends them.
This is true for the **notice of hearing.**

> The **notice of hearing** is a paper sent to the people in a case.
> This paper tells them the place, date and time of the hearing.

The office is also where you get copies of documents.

The office clerk is one of the employees of the office.
He can carry out official functions.
He can sign procedures to make them legal.

For example, he can sign a **summons to appear.**

A **summons to appear** is a paper ordering a person to go before a tribunal to testify.
This paper tells you the place, date and time of the hearing.
It is also called a ***subpoena***.

The decision-maker

The decision-maker leads the hearing at the tribunal.
The government has laws about how to name or replace the decision-makers.
Depending on the tribunal, the decision-maker can also be called commissioner, administrative judge, arbitrator or member.
Other names might be used.

A decision-maker is often a judge or lawyer.
He knows a lot about what the tribunal does.
For example, at the Quebec Labour Relations Board, many of the commissioners have worked in labour law.

Before a hearing, the decision-maker reads the file of the case that will be heard.
All of the evidence is in this file.
The evidence might be photos, letters, or contracts.
This gives the decision-maker a good idea about the case.
He can find out what the conflict is about.
He prepares for the case.
He can take some time to look over the law in the case.

During the hearing, the decision-maker makes all the decisions.
He hears the evidence presented by the **parties**.

This is an important task because the decision-maker makes his decision based on the evidence.

The **parties** are the people in a case who have a conflict.
The applicant and the respondent are parties.
The decision-maker, lawyers and witnesses are not parties.

In general, the decision-maker does not ask the witnesses any questions during the hearing.
He does not decide what documents will be used as evidence.

If one or both parties do not have a lawyer or representative, the decision-maker questions the witnesses.
He decides what is most important from the evidence that the parties bring with them.

When the parties have finished presenting their evidence and trying to convince the decision-maker, he has several choices.
He can leave to think about his decision.
He can also leave to go and check the law.
The time he takes is called “advisement”.
The decision-maker takes the time he needs to think about things.
It can happen that he does not take any time to think over his decision.
He can make his decision at the hearing.
This is called making a decision “from the bench”.
The decision can also be made in writing.
Sometimes the decision-maker gives his decision at the hearing, but then he later gives the reasons for his decision in writing.
The office of the tribunal sends the written decision to the parties.

Sometimes, at the hearing, an advisor helps the decision-maker make his decision.
This advisor is called an “assessor”.

The lawyer and the representative

A lawyer is a specialist who knows the law.
She advises her clients and speaks for them at the tribunal.
A lawyer prepares documents for her clients.
She and her client figure out the best way to present the case.

A lawyer must respect professional secrecy.
All the information and papers you give to a lawyer are kept secret.
A lawyer can only share this information if the client agrees to it.

The lawyer talks to her client to understand the situation.
The lawyer must know what sort of evidence there is.
She has to decide if there is enough evidence.
She then tells her client what his choices are, depending on the law and the evidence.
Even though the lawyer is the expert, it is still up to the client to decide what to do.

The lawyer at the hearing

> The **hearing** is when the decision-maker and parties meet in the hearing room. The parties present their evidence, question witnesses and present their arguments. Then the decision-maker gives his decision.

During the hearing, the lawyer speaks for her client.
The lawyer communicates with the other party and the decision-maker.
The lawyer questions the witnesses who have been summoned.

Once the evidence is presented, the lawyer tries to convince the decision-maker that her client is right.
She shows how all the evidence is related.
She gives her opinion on the quality of the evidence, what it means and how trustworthy it is.
She tells the decision-maker what should and what should not be believed.
The lawyer tries to pick apart and contradict what the other party said.
The lawyer also explains what laws should apply.

The lawyer can refer to other decisions of the tribunal to defend her opinion.
This is called “jurisprudence”.

At some tribunals, people who do not have a lawyer can be represented by another person.
This representative can be a family member or someone from an advocacy organization.
The representative can also be a union employee.
A person can also decide to go to the tribunal alone.

The application and the applicant

If you want an administrative tribunal to make a decision about a situation, you have to ask for it in writing.

The application is a written document, a procedure.
The application is also called a motion or complaint.
In this text, we call it the main application.
It is a formality used to open a file at the tribunal.
It is the basis of the whole case.
The decision-maker gives his decision based on the main application.

The office of the tribunal often provides forms for the main application.
In general, you do not have to use the form.
A party can choose to write the main application herself.

The tribunal rules always say that the main application has to have certain information in it.
For example, you have to write the applicant's name, address and phone number.
If the applicant is challenging a government decision, he has to provide a copy of that decision.

The applicant is the person who makes the application.
He can also be called the plaintiff or interested party.
Depending on the situation, the applicant might also be called the employee, employer or beneficiary.
The applicant might also be called something else, depending on the tribunal.

At the end of an application, you will find its conclusions.
For example:

- order the respondent to pay a sum of money
- order the respondent to give the applicant back his job
- give the tenant a rent decrease

The decision-maker cannot just give you anything you ask for. His powers are limited by the law.

The defense and the respondent

The defense is the respondent's answer to the main application.
The defense is a document, a procedure.
The word "defendant" means the same as "respondent".
The respondent might also be called something else, depending on the tribunal.
If a case deals with labour relations, we say "employee" or "employer".
Sometimes, the office of the tribunal can give the respondent a defense form.
The form does not have to be used.
The names of the parties and the file number must be put in the defense.
Also, the respondent explains what he thinks of the applicant's demands.
This is his side of the story.
The respondent's explanation can be detailed or not.

Other applications or motions

Other applications can be made to the tribunal during the proceedings.
The "proceedings" means the period of time between the beginning and end of the trial.
These other applications must be related to the main application.
A decision-maker gives a decision on every application.

Some applications are made at the beginning of the **proceedings**.
They are used to get ready for the case.
There are also more general applications related to the hearing.
And there are applications related to the decision.
The tribunal's rules tell you how to present these applications.

> The **proceedings** are the period between the beginning and end of a case before a tribunal.
> It is the period between handing in the main application and the final decision.

Whether the application is written or oral, it is usually argued at a hearing.

Applications before the hearing

These applications are also called preliminary applications.
They can challenge the whole case.

For example, a respondent might say that:

- the applicant chose the wrong administrative tribunal
- the tribunal does not have the right to handle the case
- the application is not detailed enough
- the application was made too late.

Applications about the hearing

These applications are mostly about:

- changing the hearing date
- changing where the hearing will be
- changing the decision-maker
- making witnesses leave the hearing room
- making the public leave the hearing room (closed hearing)
- not letting the media publish what was said in the hearing

The rules of the tribunal tell you how and when to make these applications.

Application for postponement

You can make an application for postponement if you want to change the date and time of the hearing.
In general, the rules say that the application for postponement must be done in writing before the hearing.
The application must be sent to the other party and handed in to the tribunal.
Either party can hand in an application for postponement.

If the other party agrees to the postponement, this will affect the decision on whether or not to allow it.
But this is not always enough for the decision-maker to say yes.
The reasons for the application for postponement and the importance of the file are also considered.
For example, let's say that a three-day hearing with 15 witnesses was already postponed twice.
It would be more difficult to postpone that than a 30 minute hearing without witnesses.

Application for revocation

Even if the final decision has been made, you can still make applications to the tribunal.
One example is the application for revocation of the decision.
This is the most common.
This application can be made in most tribunals.
It lets you cancel a decision that was made without one of the parties there.
It lets you start the hearing over.
This application is only for very special cases.
The application for revocation must be given to the administrative tribunal only a few days after the party finds out about the decision.
The party's reason for being absent has to be serious.
A person can be absent because of an accident, illness or death of a loved one.

The hearing

The hearing is when the parties present their evidence to the decision-maker.
This is when they discuss and defend their ideas.
They give their opinion.
They try to convince the tribunal that they are right.

A hearing can be held for the main application.
Hearings can also be held for motions or other applications.

The hearing must be public.
Everyone can go and watch it.
At the hearing, the parties have the right to present evidence.
They have the right to examine and cross-examine the witnesses.
They have the right to discuss and defend their ideas.

The hearing is divided into steps.
At the beginning, the decision-maker and the hearing clerk make sure everyone is there.
Then the decision-maker summarizes the application and says how things will work during the hearing.
In long cases, the parties might even summarize their case for the decision-maker.
The parties might make applications asking to make witnesses or the public leave the hearing room.

The inquiry

The inquiry is when the parties present their evidence to the decision-maker.
Normally, the applicant presents his evidence first.

He calls his witness to the witness box, which is at the front, facing everyone.
The witness takes an oath (he swears) to tell the truth.
This is when the examination begins.
The witness answers the questions as well as he can.
Then the other party can question this same witness.
This is the cross-examination.
The other party does not have to cross-examine the witness.
The applicant presents all his witnesses.
He also hands in any other evidence.

Then it is the respondent's turn to present his evidence.
The respondent does not have to present evidence.
He calls his witnesses to the witness box to examine them.
Then the applicant questions the respondent's witnesses.
The evidence is closed when the respondent has finished presenting his evidence.
After this, it is too late to present new evidence.

The pleading

After the inquiry, it is time for the pleading.
Pleading means a person states what they think and why.
It is also called presenting arguments.
The pleading is when the parties tell the decision-maker what they think about the case.
The parties discuss the evidence and the law that applies.
This is when you have to convince the decision-maker that you are right and the other party is wrong.
In general, the applicant speaks or pleads first.
Then the respondent speaks.
The applicant may have the right to answer to the respondent's pleading.

Evidence

Evidence is the most important thing in convincing the decision-maker.
The decision made by the decision-maker is based only on the evidence.

There are different types of evidence:

- witness evidence or testimonial evidence
- documentary evidence
- opinion evidence, normally from an expert
- objects as evidence
- written testimony under oath or affidavit

There is also admission evidence.
This is when the parties agree to state before the tribunal that something is true, without needing to prove it.

Witness evidence

Witness evidence is used the most.
It is when someone tells the tribunal everything he knows about the case.
Sometimes the witness writes his testimony. This kind of testimony is called an affidavit.
Before testifying, the witness swears that he is telling the truth.
If the witness lies, he is tricking the tribunal.
This is illegal, it is an offence.
This offence is called perjury.

Documentary evidence

Documentary evidence means documents or papers that are used as evidence.
For example, a contract, photo, letter, report, or permit.
The person who hands in the evidence has to be familiar with the document.
For example, a photo can be handed in by the person who took the photo.
Or it can be handed in by someone who is in the photo or who was there when it was taken.
The rules are the same for other documents that are used as evidence.
The person who signed or wrote a contract can hand it in as evidence.

Objects

Sometimes, objects can be used as evidence.
A tenant with plumbing problems can hand in pipes to show the problem is serious.
Or the person can just take a photo if that is easier.

Affidavit

An affidavit is someone's written testimony.
It is when you write down what you know about the case.
It is also a testimony under oath.
You have to swear that you are writing nothing but the truth.
Affidavits are mostly used when there is no hearing held.
Affidavits are used as evidence in some applications.

Rules of evidence

There are many rules about what sort of evidence you can hand in.
These rules say when and how to do this.
These are rules of evidence.
Rules of evidence are less strict before administrative tribunals.
This makes hearings simpler and faster.

Evidence must meet certain conditions to be accepted.

1- The evidence has to be related to the case. This is called relevance.

2- The evidence has to be from a source that can be trusted. This is its called its trustworthiness. A decision-maker can refuse a document that seems to be a fake.

3- The evidence cannot be unjust for the other party, it must be fair. A decision-maker can refuse evidence if it was found in an illegal way.

If evidence does not meet one of these conditions, the decision-maker can refuse to allow it to be handed in.
He will not consider it.
It is up to the decision-maker to decide what evidence can be handed in.

In his decision, the decision-maker says what evidence he based his decision on.
If he rejected some evidence, he explains why.

Objections

Everyone must respect the rules of evidence.
When a party wants to submit evidence, the other party can object to it.
When a party wants to object to something, he says, "Objection."
The decision-maker then lets the parties talk to him to see if the evidence should be allowed or not.
Then he decides if he accepts the evidence.

A decision-maker might also decide by himself that evidence should not be accepted.
This happens a lot when one or both parties don't have a lawyer and no one objects to the evidence.

The witness and the testimonial

A witness informs the decision-maker about a case.
This information is called a testimony.
It means saying what you know, and what you saw or heard about the case.

The summons and the obligation to appear

In general, the parties decide what evidence will be presented to the decision-maker.
The parties also pick the witnesses.
In some administrative tribunals, the decision-maker can summon witnesses himself.

If a party decides to have someone testify, he has to make sure that the witness is there at the hearing.
If the party trusts the witness, he asks her to come to the tribunal on the day of the hearing.
If he does not trust the witness, he can make sure she shows up on the day of the hearing.
He does this by sending the witness a paper that is called a summons to appear or a notice to appear.
It is also called a subpoena.
It is an order to be at the tribunal at the date, the time, and the place that it says.
This is more than an invitation or meeting.
The person must go.
If you receive a subpoena, it is illegal not to go.
Failing to show up is an insult to the tribunal.
This is called contempt of court.
If a witness does not show up, it is possible to ask that the case be moved to a later date.

The obligation to answer questions

When the hearing starts, the witnesses are called.
Each one takes his turn going before the decision-maker and parties.
Every witness has to take an oath (swear) that he will tell the whole truth.
Each of the two parties questions the witness.
A witness must answer the questions that he is asked.

The opinion of the witness and expert witness

An ordinary witness is different from an expert witness.
The ordinary witness can give his opinion on everyday situations.
He can testify about the temperature, or someone's age and general state (drunk or angry, for example).
Only the expert witness can give his opinion about a more complicated situation.

The expert witness is a specialist in a field.
It can be a doctor, a mechanic, a psychologist.
He is summoned as a witness because of his knowledge and expertise.
He gives his opinion to the decision-maker.
He describes the situation.
He says what he knows and thinks based on the situation and his expertise.
So the expert witness has to know about the situation before he can give his opinion.
For example, let's say the expert is a doctor who must testify about the respondent's injury.

The expert has the respondent do some tests.
Then he writes a report.
The respondent gives the report to the tribunal.
He sends it to the other parties several days before the hearing.

Before the expert can testify, the party who summoned him has to prove he really is an expert.
It is up to the decision-maker to say whether the witness is an expert or not.
He also decides what field the witness is an expert in.

The decision

The decision is the most important step for the parties.
The applicant and the parties go through all the other steps of the **proceedings** to get a decision.

> The **proceedings** are the period between the beginning and end of the case before the tribunal.
> It is the period between when the main application is handed in and the final decision.

Enforcing the decision

If the decision-maker has given his decision and the applicant gets what he wanted, two things can happen:

1. The respondent might do what he is asked. He might respect the decision. This is called voluntary execution.

2. If the respondent refuses to respect the decision, he can be forced. This is called forced execution.

The applicant can use forced execution procedures.
These force the respondent to obey the tribunal's decision.
The decision will often order the respondent to pay an amount of money.
If he does not pay it, it is possible to go to his home and take his things.
This is called seizure.
It is possible to take belongings that equal the amount of money awarded by the decision-maker.

For example, the sheriff can seize furniture, a car, money, a house, a chalet.
The applicant cannot go on his own to take the things.
It is a sheriff who does this.
There are formalities that must be followed.

The applicant can also have someone's salary seized.
The decision-maker might also order the respondent to do something.
The respondent must obey this order.
If he does not, it is contempt of court.
It is against the law.
A respondent who commits contempt of court can be ordered to pay a fine or go to prison.

Reconsideration, appeal and judicial review

Reconsideration

Reconsideration allows an administrative tribunal to take a second look at its decision.
One of the two parties has to ask for it.
The reasons that allow for a reconsideration can be found in rules of procedure.
Reconsideration is possible if new evidence is found.
It is also possible if there was a problem with formalities.
Another decision-maker from the administrative tribunal reconsiders the decision without having another hearing.

Appeal

An appeal allows you to challenge an administrative tribunal's decision before another tribunal.
The other tribunal is called an appeal tribunal.
This measure makes sure that laws are understood and applied in a stable way.

Not all the decisions of all administrative tribunals can be challenged on appeal.
Administrative tribunal decisions are often final.

If an appeal is possible, there are rules to follow.
You have to do it at the right time and in the right way.
There are different ways to appeal a decision.
You can hand in a notice of appeal to the office of the appeal tribunal.
It is the same as with the main application.
Sometimes you have to ask for permission to appeal.

Sometimes there is even a hearing to decide if you can appeal.

The appeal tribunal makes its decision by looking at the evidence given to the administrative tribunal.
When a case is on appeal, you do not give evidence all over again to the appeal tribunal.
If the hearing was recorded, this will be written up and put in the file.
The appeal tribunal decides if the decision-maker at the administrative tribunal made a mistake.

If the appeal tribunal says that the decision-maker made a mistake, it can change the decision.

It can also order a new hearing before the administrative tribunal.

Judicial review

Judicial review is used to try to cancel an administrative tribunal's decision.
This happens when an administrative tribunal makes a certain kind of error or a serious error.
Judicial review can also be called the "superintending and reforming power" of courts.
Only the superior courts and the Federal Court of Canada have this power.

You can ask for judicial review in three situations:

1- When the decision-maker did not have the right to handle the case.

The law says in which area or territory an administrative tribunal can act.
This is its competence, also called jurisdiction.
A decision can be cancelled if a decision-maker is handling a case that is outside his competence.

Judicial review is also possible:

2- When the decision-maker did not respect basic rules of justice.
For example, the parties were not allowed to present their evidence, or they were not allowed to be heard by the tribunal.
It is also possible when the decision-maker or tribunal is not independent enough from the government.

Finally,

3- when the decision-maker really did not understand the law or events in the case.

Different ways of settling a conflict

Administrative tribunals encourage people to settle their conflicts without having a hearing.
They suggest other methods.

These methods are quick, effective and cost less.
They are used to settle most of the cases before an administrative tribunal.
They allow you to avoid having a hearing.
You do not have to use these methods.
They are just one of the steps of a case that is before an administrative tribunal.

A case can be settled by negotiation, conciliation and mediation.
The goal of these methods is to find a solution that makes all the parties happy.
For this to work, both parties have to agree to settle their conflict in this way.
They have to agree to accept a settlement.
If needed, they can do this with the help of a neutral person called a conciliator or mediator.

Negotiation

Negotiation starts when people want to reach an agreement using discussion and compromise.
A compromise is a settlement that is accepted.
People usually try negotiation before going to a tribunal.
It can also be done even if the case has already started.
The parties can negotiate directly with each other.

They can also do it by going through their representative or lawyer.

Mediation

Mediation is like negotiating, but with the help of a mediator.
The mediator is a neutral person.
He makes the dialogue and conversation easier.
The mediator has an important role.
He can suggest solutions to the parties.

Conciliation

Conciliation is a lot like mediation.
People often think it means the same thing, but it is a bit different.
The conciliator's role is different.
He just helps the parties talk to each other.
He does not suggest a solution.

This guide was developed by Éducaloi.

A very special thank you is owed to Ms. Clode Lamarre for simplifying the contents of this guide.

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Appendix

Purpose of this guide

Have you ever encountered a problem while away on a trip and been forced to somehow find a solution using a foreign language? If so, think of the anxiety and powerlessness you felt as you scanned through documents written in an unfamiliar language. Perhaps everyone around you was talking, but you could not figure out what they were saying. Maybe you wanted to ask someone for help, but could barely make yourself understood – either in writing or orally. For you, this might have just been a difficult moment during a trip. For many citizens with low literacy skills, it is their daily life.

Indeed, a significant part of the population is incapable of reading a text as simple as the dosage on a medicine bottle. Imagine what these people go through when faced with proceedings before an administrative tribunal: a sea of voluminous documents, a constant flow of incomprehensible terms contained in unfamiliar papers, and the hurried words of specialists. And all of this takes place in public!

While administrative tribunals are a familiar world for those who visit them on a daily basis, they are imbued with a culture based on a certain history, requirements, norms and, most importantly, language. We realize that this legal language is very much a specialist's jargon. It can therefore be unfamiliar and confusing for members of the public. For people with low literacy skills, it can be almost entirely incomprehensible.

This is why we wanted to create this plain-language guide (Grade 4 level). While some might find the simplicity surprising, it must be kept in mind that our objective was to produce a guide that would be read and understood by those to whom it is addressed. In order to render the text readable for people with low literacy skills, we had to sacrifice the aesthetic appeal of the text, and sometimes even break rules of syntax and style.

This guide explains the tribunal's role, the role of the people who work there, rules of evidence and procedure, the rights and obligations of parties and many other important subjects. We wanted to produce a guide that would be applicable throughout Canada. We realize that terminology and the meaning of some notions included in this guide may vary from one province to another, and from one tribunal to another. As a result, you will not find in this guide all of the specificities or subtleties of every tribunal.

In short, this text presents the big picture regarding the main legal rules underlying the existence and daily practice of law before Canada's administrative tribunals.

Enjoy!