

Usual Appeal Process (2024-JUL-15)

The information below relates to appeals of determinations issued by the Director of Employment Standards (“Director”) under the *Employment Standards Act* (“ESA”) or the *Temporary Foreign Worker Protection Act* (“TFWPA”).

The usual time period for deciding an appeal is approximately 6 to 7 months from the date the Tribunal receives an application to appeal a determination. However, the time period for deciding the appeal may be extended if the Tribunal seeks submissions on the merits of the appeal or if other circumstances require extensions of deadlines for submissions.

This document is not a substitute for, nor does it replace, the requirements of the *ESA*, the *TFWPA*, the *Administrative Tribunals Act*, the *Employment Standards Regulation*, the *Temporary Foreign Worker Protection Regulation*, the Tribunal’s Rules of Practice and Procedure, or the Tribunal’s Practice Directives. You may wish to separately review these documents; they may be accessed through the Tribunal’s website.

This document is not binding on individual Tribunal Members. This document is not meant to provide you with any legal advice.

TRIBUNAL REVIEW OF THE APPEAL SUBMISSION

On receipt of an application to appeal a determination, the Tribunal reviews the submission to establish if it meets the requirements for filing an appeal and if the submission was filed within the appeal periodⁱ.

If the appeal submission does not fulfill all the requirements, the Tribunal will:

- notify the appellantⁱⁱ that the appeal submission must be corrected before it will be accepted; and
- set out the time limits for the appellant to correct the appeal and comply with any other directions.

If the appellant fails to deliver the corrected appeal within the time allowed, the Tribunal may close the file without holding a hearing and without notifying any other party.

ACKNOWLEDGEMENT OF THE APPEAL

If the application to appeal fulfills the requirements for filing an appeal, or if the appellant has delivered the corrected appeal within the time allowed, the Tribunal will send a letter to the appellant, to the respondent(s)ⁱⁱⁱ, and to the Director.

In the letter, the Tribunal may

- acknowledge that the Tribunal has received an appeal.
- include a copy of the appeal submission and any other documents filed with the appeal.
- request further information from the appellant.
- request the Director provide the Tribunal and the parties to the appeal with a copy of the record that was before the Director at the time the determination was made^{iv} (“Record”).

SUBMISSIONS ON RECORD COMPLETENESS

After the Director has delivered the Record to the Tribunal and to the parties, the Tribunal may give the parties an opportunity (with a deadline) to advise the Tribunal if there are documents that were provided to the Director during the Director’s investigation that are missing from the Record.

If a party advises the Tribunal that there are documents missing from the Record, the Tribunal may request a response from the Director and may request a final reply from the party who provided the objection to the completeness of the Record.

If the Tribunal is not advised that there are documents missing from the Record, or if the deadline for a reply has passed, the Tribunal assigns the appeal to a Panel for a decision.

ASSIGNMENT TO A PANEL FOR A DECISION

Once the submissions process regarding the completeness of the Record is completed, the Tribunal assigns a Panel to decide the appeal.

If the Panel determines all or part of the appeal should be dismissed^v, the Panel issues a decision.

If all or part of the appeal is not dismissed, the Tribunal will seek submissions (with a deadline) from the respondent(s) and the Director on the merits of the appeal. The appellant will be given an opportunity to make a final reply to the submissions, if any.

The Tribunal will disclose the final reply, if any, to the parties and the Panel will decide the appeal. In a decision^{vi} the Panel may confirm, vary, or cancel the determination, or refer it back to the Director.

The parties are provided a copy of the decision. The decision is also posted on the Tribunal's website and may be posted in other legal publications.

NEXT STEPS AND FURTHER INFORMATION

An order or decision of the Tribunal is subject to reconsideration^{vii}.

Please contact the Tribunal if you require further information on the Tribunal's processes.

ⁱ See section 112 of the *ESA* or see section 68 of the *TFWPA*.

ⁱⁱ "appellant" means a person or entity served with a determination who files an appeal with the Tribunal.

ⁱⁱⁱ "respondent" the person or entity replying to an appeal, application for reconsideration, or other application.

^{iv} See section 112(5) of the *ESA* or see section 68(5) of the *TFWPA*.

^v See section 114 of the *ESA* or see section 70 of the *TFWPA*.

^{vi} See section 115 of the *ESA* or see section 71 of the *TFWPA*.

^{vii} See section 116 of the *ESA* or see section 72 of the *TFWPA*.