

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Canada

PROCEDURAL GUIDE FOR APPEALS

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PREAMBLE

The Occupational Health and Safety Tribunal Canada's *Procedural Guide for Appeals* was developed to assist the parties (employers, employees and trade unions) with the process of hearing appeals. This guide uses plain language to facilitate the understanding of the process; however, Part II of the *Canada Labour Code* takes precedence. In case of conflict or ambiguity, please refer to the *Canada Labour Code*.

This document is only meant as a guide. The appeals officer is master of the procedure and may choose to add or omit certain steps if it is fair and equitable to do so or to provide for a more informal process.

This guide is non-gender specific.

1. DEFINITIONS

In this guide,

appeal means the recourse taken against a decision rendered by the Minister or a ministerial delegate, in accordance with subsection 129(7) of the *Code*, or a direction issued by the Minister or a ministerial delegate, in accordance with subsection 146(1) of the *Code*; (*appel*)

appeals officer means a person designated by the Minister to hear and decide appeals; (*agent d'appel*)

appellant means any person who, under the *Code*, appeals a decision or direction in writing, or who has been made an appellant by an appeals officer; (*appelant*)

Code means Part II of the *Canada Labour Code*; (*Code*)

direction means an order issued by the Minister or an official delegated by the Minister of Labour (ministerial delegate) to an employer or an employee identifying a contravention to the *Code* or a danger, and directing them to correct the situation within a given time frame; (*instruction*)

hearing means the proceeding during which each party presents its case before the appeals officer (*audience*)

holiday means any of the following days, namely, Sunday, New Year's Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day and Boxing Day; (*jour férié*)

in writing means transmission by facsimile, e-mail or postal or messaging service; (*par écrit*)

Minister means the Minister of Labour; (*ministre*)

ministerial delegate means the official delegated by the Minister to render decisions under paragraph 128(13)(b) or (c) of the *Code* or issue directions under section 145 of the *Code*; (*délégué ministériel*)

party means the person participating in the appeal as an appellant, a respondent, an intervenor, or who has been made a party by the appeals officer; (*partie*)

person means an employer, an employers' organization, a trade union, a council of trade unions, an employee or a group of employees; (*personne*)

representative means a lawyer or any other person the appellant or respondent authorizes to represent them during the appeal; (*représentant*)

respondent means the person participating in the proceeding to oppose the appeal or who has been made a respondent by the appeals officer; (*intimé*)

spokesperson means, in the case of a refusal to work exercised by more than one employee, the employee designated to act on their behalf; (*porte-parole*)

Tribunal means the Occupational Health and Safety Tribunal Canada. (*Tribunal*)

2. FILING DOCUMENTS

2.1 Method of filing

Documents are to be filed with the Tribunal* in one of the following ways:

- a) By e-mail:
OccHealth-Santetrav@tribunal.gc.ca
- b) By fax:
613-995-9493
- c) By messenger, mail or in person:
C.D. Howe Building
240 Sparks Street, 4th Floor West
Ottawa, Ontario, K1A 0X8

*Appeals of decisions rendered or directions issued by the Minister or a ministerial delegate on or after July 29, 2019, are to be filed with the Canada Industrial Relations Board.

2.2 Date of Filing

The date of filing of a document intended for an appeals officer is:

- a) If the document is sent by regular or registered mail, the date of the postmark; and
- b) In any other case, the date and time the document is received by the Tribunal.

3. TIME LIMITS

3.1 Time Limit to Appeal

3.1.1 Decisions rendered in the context of a work refusal

Under subsection 129(7) of the *Code*, an employee has 10 days after receiving written notice of the decision from the Minister or the ministerial delegate to file an appeal of any the following decisions:

- 1) That a danger does not exist;
- 2) That a danger exists, but the danger is a normal condition of employment;
- 3) That a danger exists, but the refusal puts the life, health or safety of another person directly in danger.

3.1.2 Direction

Under subsection 146(1) of the *Code*, an employer, employee or trade union (hereinafter “union”) has 30 days after the issuance or written confirmation of the direction to file an appeal.

3.2 Calculation of Time Limits

If the time limit for the completion of any task or the filing of any document expires or falls on a Saturday or a holiday, it is extended to the next working day.

For example, the time limit to file an appeal of a decision is 10 days. If the 10th day falls on a Sunday, the 10th day will be brought forward to Monday:

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
10 day deadline	Actual deadline to submit the appeal					

For example, the time limit to file an appeal of a direction is 30 days. If the 30th day falls on one of the above holiday, the 30th day will be brought forward to the next day that is not a Saturday or a holiday or a weekend.

Friday	Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday
Good Friday			Easter Monday	Deadline to submit the appeal		

3.3 Extending Time Limits

- a) The appeals officer has the discretion to extend the time limit for filing an appeal, performing an act, filing a document or submitting evidence.
- b) Any request to extend a time limit must be submitted in writing to the appeals officer, along with reasons for the request using the “*Application to an Appeals Officer*” form.
- c) The appeals officer may ask the parties to provide comments regarding the request.

4. APPEALS PROCEDURE

4.1 Filing an appeal

An appeal is initiated when an employer, an employee or a union files a written notice of appeal with the Tribunal.

4.2 Notice of Appeal

- a) An appeal is initiated by filing the “*Notice of Appeal*” form available on the Tribunal’s website or otherwise providing all the information requested on the form.
- b) The appellant attaches to the “*Notice of Appeal*” a copy of the decision(s) or direction(s) being appealed.
- c) Upon receipt of the “*Notice of Appeal*” or of all the information required to initiate an appeal, the Tribunal will acknowledge receipt.

5. PRELIMINARY REVIEW

- a) The appeals officer may, after reviewing the file, reject the appeal either because:
 - i) it is not within the appeals officer’s jurisdiction; i.e. within the powers granted to an appeals officer by the *Code*, or
 - ii) it was brought after the time limit has expired.
- b) The appellant, respondent or any other party may question the jurisdiction of the appeals officer at any time.

6. PARTIES TO THE APPEAL

6.1 Appeal of a Decision rendered in the context of a work refusal

- a) In the case of an appeal of a decision under subsection 129(7), the appellant is the employee who exercised the right to refuse to work. A union or another person may file an appeal under subsection 129(7) on behalf of the employee if expressly designated to do so.

- b) The respondent to the appeal is the employer.
- c) Upon receipt of an appeal, the Tribunal will notify the employer. As a respondent, the employer will be required to inform the Tribunal of its intention to participate in the appeal proceedings.
- d) If the employer intends to participate, it shall notify the Tribunal in writing and provide the following information:
 - i) name, address, telephone number, fax number and e-mail address and, if applicable, its representative;
 - ii) the mailing or e-mail address to which documents can be sent.
- e) If the employer chooses not to participate in the proceedings, it will not be entitled to further notice of the proceedings and the Tribunal will proceed in its absence.

6.1.1 Group Refusal

- a) If more than one employee has exercised the right to refuse to work due to circumstances of a similar nature and wish to appeal, the employees may designate one employee from amongst themselves to act as a spokesperson throughout the appeals process.
- b) The spokesperson will file a notice of a group appeal with the Tribunal using the “*Notice of Appeal of a Decision following a Group Work Refusal*” form.

6.2 Appeal of a Direction

- a) Employers, employees or unions may appeal directions issued by the Minister or the ministerial delegate pursuant to subsection 146(1) of the *Code*.
- b) Where the employer is the appellant and the work place is unionized, the union or unions representing the employees may choose to act as the respondent. In the event that a direction specifically affects one employee, the affected employee may also choose to act as a respondent.
- c) Upon receipt of an appeal of a direction filed by an employer, the Tribunal will notify the union or unions representing the employees if there are indications that the work place is unionized. Where the appeals officer deems it necessary, the Tribunal will also notify an employee specifically affected by the direction. The union or, as the case may be, the employee notified by the Tribunal will be required to inform the Tribunal of the intention to participate in the appeal proceedings.
- d) If a union or employee intends to participate as a respondent, the union or employee shall notify the Tribunal in writing and provide the following information:

- i) name, address, telephone number, fax number and e-mail address and, if applicable, of the union or the employee's representative;
 - ii) the mailing or e-mail address to which documents can be sent.
- e) If a union or employee notified by the Tribunal chooses not to participate in the proceedings, the union or employee will not be entitled to further notice of the proceedings and the Tribunal will proceed in the union or employee absence.
 - f) Where the union or an employee is the appellant, the respondent is the employer. The Tribunal will follow the same process as specified in paragraphs 6.1(c) to 6.1(e) of this guide.

7. DOCUMENTS OF THE MINISTERIAL DELEGATE

- a) On receipt, the Tribunal informs the ministerial delegate that a notice of application to appeal has been filed.
- b) The ministerial delegate promptly sends the Tribunal the Minister or ministerial delegate's investigation report, a copy of the decision or direction and any other related document relevant to the decision or direction.
- c) The Tribunal forwards each party a copy of the aforementioned documents.

8. REPRESENTATIVE

- a) Any party to an appeal may act on its own or through a representative. The representative's name and contact information must promptly be provided to the Tribunal.
- b) The appellant who has a representative provides this information on the "*Notice of Appeal*" form. The respondent who has a representative must provide to the Tribunal at the earliest opportunity the name and contact information of the representative.
- c) Where the representative stops acting on behalf of a party, the representative promptly sends a notice to that effect to the Tribunal and informs the other parties in writing.

9. ADDITION OF PARTIES

- a) The appeals officer may grant the status of appellant or respondent to any person or group, who in the appeals officer's opinion has essentially the same interests as one of the parties and who could be affected by the decision.
- b) The application to be added as a party is made in writing, duly dated and signed by the person or group, or their representative, using the "*Application to Obtain Party Status*" form, or by providing the following information:

- i) the name, address, telephone number, fax number and e-mail address of the person or group and, if applicable, the representative;
 - ii) the file number assigned by the Tribunal to the appeal contemplated by the application;
 - iii) the reasons for the application.
- c) Before making a decision, the appeals officer allows the other parties to the appeal to provide comments in support of or opposing the application.

10. INTERVENTION

- a) A person or group who is not a party to the appeal, but who has an interest in the appeal may request to be granted intervenor status by the appeals officer.
- b) The application for intervention is made in writing using the “*Application to Obtain Intervenor Status*” form, duly dated and signed by the person or group, or a representative, or by providing the following information:
 - i) the name, address, telephone number, fax number and e-mail address of the applicant and, if applicable, of the applicant’s representative;
 - ii) the file number assigned by the Tribunal to the appeal contemplated by the request;
 - iii) the interest and reasons for the application;
 - iv) the contribution the applicant believes it can make to the appeal hearing.
- c) The appeals officer may grant intervenor status to a person or group after having considered any relevant factors, including whether:
 - i) the person or group has an interest in the appeal;
 - ii) the person or group has a position that is already represented in the proceeding;
 - iii) public interest or the interest of justice will be served with the intervention of the person or group;
 - iv) the intervention of the applicant and, if applicable, of the applicant’s representative, will assist the appeals officer in making a decision.
- d) Before making a decision, the appeals officer allows the other parties to the appeal to provide comments in support of or opposing the application.
- e) The appeals officer who allows the intervention determines the extent of the participation and procedure for the intervenor to follow.

11. JOINING APPEALS OR HEARING APPEALS CONCURRENTLY

When two or more appeals raise similar facts or issues, the appeals officer may order the appeals joined or may decide to hear them concurrently to facilitate the appeals process, either on the appeals officer's own initiative or on the written request of a party.

12. STAY OF DIRECTIONS

- a) A direction must be complied with unless a stay is granted. However, an appellant may, at any stage of the proceedings, apply to an appeals officer for a stay of the direction.
- b) A stay is a special measure that suspends the application of the direction under appeal. When a stay is granted by an appeals officer, the employer or employee is not legally required to comply with the direction pending the outcome of the appeal.
- c) The duration and conditions of the stay are as the appeals officer sees fit.
- d) An application for a stay is submitted in writing using the "*Application for a Stay of a Direction Issued by an Official Delegated by the Minister of Labour*" form. The appeals officer may grant a stay if the following 3 criteria are met:
 - i) there is a serious question to be tried as opposed to a frivolous or vexatious claim;
 - ii) the applicant would suffer significant harm if the direction is not stayed; and
 - iii) should a stay be granted, measures will be put in place to protect the health and safety of employees or any person granted access to the work place.
- e) The Tribunal communicates with the respondent following receipt of an application for a stay to receive comments - submissions regarding the application.
- f) If the appeals officer deems it necessary, the appeals officer will hold a hearing by teleconference or in another form. The appeals officer will render a decision on the application for a stay as soon as possible thereafter.

13. PRE-HEARING CONFERENCE

- a) With a view to facilitate effective management of proceedings, the appeals officer holds a pre-hearing conference to discuss procedure, evidence and general administrative matters relating to the upcoming hearing.
- b) The conference is held by telephone. The Tribunal informs all the parties of the date and time.

- c) Various matters can be addressed during the pre-hearing conference, including:
 - i) Preliminary issues: issues that can be brought forth before the hearing (including requests for adjournments, scope of the issue, mootness, etc.);
 - ii) the submission of an agreed statement of facts;
 - iii) the witness list;
 - iv) the procedure for the appearance of expert witnesses;
 - v) how the hearing will be conducted;
 - vi) the order in which parties will present evidence and submissions, each party's witnesses, the order in which they will appear, and how much time each party will need to present their case;
 - vii) the need to visit the work place;
 - viii) the duration and dates of the hearing;
 - ix) administrative matters that need to be addressed before the hearing including the need for simultaneous interpretation;
 - x) any other matter that could assist in the production of evidence and in expediting the hearing.
- d) The appeals officer may hold the pre-hearing conference in the absence of any party who fails to attend after being informed of the date and time.

14. WITNESS LIST

Each party must send to the Tribunal, within the time limit indicated by the appeals officer during the pre-hearing conference, a list of the witnesses they plan to call, along with a summary of the subject matter of the witnesses' testimonies.

15. EXPERT WITNESS

A party wishing to call an expert witness must provide, in a time frame determined by the appeals officer, the following documents to the Tribunal:

- a) the expert's résumé;
- b) the request and questions addressed to the expert; and
- c) a summary of the testimony or report signed by the expert.

In determining the timeframe for the filling of the above noted documents, the appeals officer will ensure that the other parties have sufficient time to provide a counter expertise before the hearing, should they wish to do so.

16. EXCLUSION OF WITNESSES

- a) The appeals officer may, on his or her own initiative or at the request of the parties, exclude any witness who has not yet testified from the hearing room in order to prevent the witness from being influenced by the testimony of other witnesses.
- b) Witnesses excluded from the hearing room must not discuss evidence with anyone else present at the hearing, including witnesses that have already testified and witnesses that will testify later.
- c) If exclusion of witnesses is ordered, a witness who is also a party will not be required to leave the room during other witnesses' testimony.
- d) The appeals officer may add any conditions he or she deems necessary to the exclusion of witnesses.

17. MEDIATION

- a) Parties that appeal a decision rendered pursuant to subsection 129(7) may, at any time during the appeal process, avail themselves of the mediation services offered by the Tribunal to assist with the settlement of the matter, shorten the duration of the appeal or clarify the issues in dispute.
- b) If the parties avail themselves of mediation services, the appeal is put on hold; it can be reactivated at any time by any one of the parties.
- c) Mediation is voluntary and any party may terminate mediation at any time.
- d) If the mediation is successful, the appellant will be invited to withdraw the appeal. If the mediation is unsuccessful, the appeal is assigned to an appeals officer and a hearing will be scheduled.

18. MINISTERIAL DELEGATE TESTIMONY

- a) The ministerial delegate who rendered a decision or issued direction is not a party to the appeal.
- b) Where the appeals officer deems that it is necessary to hear the testimony of the ministerial delegate, the ministerial delegate will testify as the appeals officer's witness. The ministerial delegate's main questioning (examination in chief) is done by the appeals officer and it may be followed by further questioning (cross-examination) by each party.

19. TYPES OF HEARINGS

To allow the parties to be heard, the appeals officer may proceed in any of the following manners or a combination thereof:

- a) a hearing in the presence of the parties;
- b) a hearing via teleconference or videoconference;
- c) a hearing by way of written submissions

20. SCHEDULING AND FAILURE TO PARTICIPATE

- a) When the appeals officer has decided to proceed by way of oral hearing, the Tribunal will contact the parties regarding the scheduling of the hearing and a date will be fixed.
- b) At least 15 days before the scheduled hearing date, the Tribunal sends the parties a notice indicating the date, time and location of the hearing.
- c) The appeals officer may proceed with the hearing and render a decision without any further notice to any party who fails to attend after the notice of hearing was sent.
- d) In the event of a hearing by way of written submissions, the Tribunal will send the parties a notice informing them of the procedure and time limits to file the submissions, which may include affidavits. An appeals officer who decides to proceed by written submissions may render a decision without any further notice to any party who fails to participate after the parties were informed of the procedure and its form.

21. VISITS TO THE WORK PLACE

In the course of the proceedings, an appeals officer may, on the appeals officer's initiative or at the request of the parties, if deemed necessary, examine documents or records, make inquiries and visit the work place concerned in the appeal.

22. HEARING PROCEDURE

Below is a general outline of the procedure that can be expected during a hearing. However, an appeals officer may depart from this outline to best suit the needs of a hearing:

- 1) Appeals officer's opening statement
- 2) Preliminary questions and objections
- 3) Parties' and intervenors' opening statements
- 4) Exclusion of witnesses
- 5) Testimony by ministerial delegate who issued the direction or decision (if necessary)
 - Examination-in-chief by the appeals officer
 - Cross-examination by the parties and, if applicable, intervenor
 - Re-examination by the appeals officer (if applicable)

- 6) Appellant's case
 - Submission of things and documents
 - Examination-in-chief of the appellant's witnesses
 - Cross-examination by the respondent and, if applicable, intervenor
 - Re-examination by the appellant (if needed)
- 7) Respondent's case
 - Submission of things and documents
 - Examination-in-chief of the respondent's witnesses
 - Cross-examination by the appellant and, if applicable, intervenor
 - Re-examination by the respondent (if needed)
- 8) Intervenor's case (if applicable)
- 9) Appellant's reply case (if applicable)
 - Submission of things and documents
 - Examination-in-chief of the appellant's witnesses
 - Cross-examination by the respondent and, if applicable, intervenor
 - Re-examination by the appellant (if needed)
- 10) Final submissions (in writing)
 - Appellant's final submission
 - Respondent's final submission
 - Intervenor's final submission (if applicable)
 - Appellant's rebuttal
- 11) Appeals officer's decision
 - In writing with reasons

23. APPEALS OFFICER'S POWERS

Appeals officers have a number of powers under the *Code* that will facilitate their work throughout the hearing process. They are set out at section 146.2 of the *Code* and are as follows:

- (a) summon and enforce the attendance of witnesses and compel them to give oral or written evidence under oath and to produce any documents and things that the officer considers necessary to decide the matter;
- (b) administer oaths and solemn affirmations;
- (c) receive and accept any evidence and information on oath, affidavit or otherwise that the officer sees fit, whether or not admissible in a court of law;
- (d) examine records and make inquiries as the officer considers necessary;
- (e) adjourn or postpone the proceeding from time to time;

- (f) abridge or extend the time for instituting the proceeding or for doing any act, filing any document or presenting any evidence;
- (g) make a party to the proceeding, at any stage of the proceeding, any person who, or any group that, in the officer's opinion has substantially the same interest as one of the parties and could be affected by the decision;
- (h) determine the procedure to be followed, but the officer shall give an opportunity to the parties to present evidence and make submissions to the officer, and shall consider the information relating to the matter;
- (i) decide any matter without holding an oral hearing; and
- (j) order the use of a means of telecommunication that permits the parties and the officer to communicate with each other simultaneously.

Paragraph 146.1(1)(a) also provides the appeals officer with the authority to vary, rescind or confirm any decision or direction issued by a ministerial delegate. Paragraph 146.1(1)(b) gives the appeals officer the authority to issue a direction under subsections 145(2) or (2.1), also known as a "danger direction".

24. ADJOURNMENT AND POSTPONEMENT OF HEARING

- a) The appeals officer may, on the appeal officer's own initiative or at the request of the parties, adjourn or postpone the hearing at any time.
- b) Any application for adjournment or postponement must be made in writing prior to the hearing and include reasons.
- c) The other party will be given an opportunity to make submissions regarding the application. The parties may agree to adjourn or postpone the hearing but only the appeals officer can decide whether to grant or deny the application.
- d) The appeals officer considers the position of the parties regarding the adjournment or postponement before granting or denying the application. The appeals officer will take the following factors into consideration:
 - The purpose of the adjournment or postponement, including its relevance to the proceedings and its necessity for a fair hearing;
 - The position of the other participants;
 - Extraordinary circumstances arising after the date has been fixed;
 - The time the party has had to prepare for the hearing;
 - The efforts made by the party to be ready to start the hearing;
 - The nature and complexity of the matter to be heard;
 - The length of time for which an adjournment is sought;
 - Any other relevant factor.

Factors supporting the denial of an adjournment may include:

- Imprecise reasons;
- A lack of compliance with prior orders;
- Previous adjournments that have been granted to the requester;
- Previous peremptory hearing dates;
- The desirability of having the matter decided.

Factors supporting the granting of an adjournment may include:

- the consequences of the hearing are serious;
 - the requester would be prejudiced if the request was not granted.
- e) Should a request for adjournment or postponement be made orally during the hearing, in determining whether to grant the request, the appeals officer will consider the above-noted factors and whether granting an adjournment or postponement would unreasonably delay or impede the proceedings.

25. WITHDRAWAL OF APPEAL

- a) Anyone who files an appeal may, at any time before a final decision is rendered, withdraw the appeal, either in person at the hearing or by sending the Tribunal a written notice to this effect.
- b) As soon as it is informed of the withdrawal, the Tribunal closes the appeal file and so informs the parties and, if applicable, the intervenors.

26. PUBLIC NATURE OF PROCEEDINGS

- a) Appeal proceedings are public in accordance with the open court principle.
- b) The open court principle guarantees the public's right to know how justice is administered and allows the public access to hearings and decisions rendered by a courts and tribunals.
- c) The appeals officers' decisions are posted on the internet and may contain information that identifies individuals that is relevant and necessary to the determination of the appeal.
- d) In exceptional circumstances, an appeals officer may grant requests to maintain confidentiality of specific evidence and tailor the decisions to accommodate the protection of an individual's privacy or protecting the identities of witnesses or third parties involved. Some examples of exceptions to the open court principle are found at sections 27 and 28 of this guide.

27. PRIVATE HEARING

- a) The appeals officer may order a private hearing if:

- i) it is necessary to prevent a serious risk to the proper administration of justice and that alternative measures will not prevent this risk; and
 - ii) the benefits of holding a private hearing outweigh the negative effects on the rights and interests of the parties.
- b) A party seeking a private hearing makes such an application to the appeals officer as soon as possible, explaining the reasons for the request using the “*Application to an Appeals Officer*” form.
- c) The appeals officer may impose any condition the appeals officer considers necessary to conduct a private hearing.

28. CONFIDENTIALITY

- a) A party may request that all or part of the evidence entered be sealed (i.e. ensure that it is never accessible to the public) or, the decision be redacted if it contain particularly sensitive or confidential information.
- b) The above request should be made as early as possible in the proceedings.
- c) An appeals officer may order the sealing of exhibits and the redaction of the reasons for decision if:
 - i) it is necessary to prevent a serious risk to the proper administration of justice and alternative measures will not prevent this risk; and
 - ii) the benefits of such an order outweigh the negative effects on the rights and interests of the parties.

29. SUMMONS

- a) An appeals officer may summon and enforce the attendance of witnesses, compel them to give oral or written evidence under oath and to produce any documents and things that the appeals officer considers necessary to decide the matter.
- b) A party wishing to summon a witness submits a request in writing to the appeals officer, providing the following information:
 - i) the file number assigned to the appeal by the Tribunal;
 - ii) the name and address of the person to be summoned;
 - iii) the date and time of the appearance;
 - iv) the reasons for the summons; and

- v) a detailed description of the documents or things the witness must produce at the hearing along with an explanation of their relevance to the appeal.
- c) A party submitting an application request for a summons sends a copy of the application to the other parties to the appeal.
- d) The party requesting the summons is responsible for delivering the summons in person (serving). Please refer to section 146.5 of the *Code* for more details concerning wages of employees called as a witness or a party to the appeal.
- e) The person summoned attends the hearing on the date and time indicated on the summons and continues to attend until the appeals officer decides otherwise.

30. FINAL SUBMISSIONS

- a) At the end of the hearing, the appeals officer will ask the parties to provide their written submissions within a specified timeframe. If time permits, the appeals officer may also permit oral submissions to be made at the end of the hearing, with the written submissions to follow.
- b) The parties final submissions include the following:
 - i) the file number provided by the Tribunal;
 - ii) an overview of the matter in dispute;
 - iii) the relevant *Code* provisions;
 - iv) an overview of the facts and legal arguments;
 - v) the desired outcome.
- c) Each party will file their submissions in the same order in which they presented their case.
- d) The appeals officer will determine the timetable to submit the submissions at the end of the hearing.
- e) Each party filing written submissions must at the same time deliver a copy to the other parties to the appeal.

31. INACTIVE FILES

- a) If the appellant consistently fails to respond to the Tribunal's correspondence, the appellant will be notified that the appeal will be placed on the list of inactive cases for a period of three (3) months.

- b) The appellant can reactivate his appeal by submitting to the Tribunal and to the other parties a written request to this effect and providing all the missing information.
- c) Should the appellant fail to reactivate the appeal within the three (3) months, the appellant will be deemed to have abandoned the appeal and the file will be closed without further notice.

32. APPEALS OFFICER'S FINAL DECISION

- a) The appeals officer may render a decision immediately or after deliberation.
- b) The appeals officer may vary, rescind or confirm the decision or direction and issue any direction that the appeals officer considers appropriate under subsection 145(2) or (2.1) of the *Code*. The appeals officer provides the parties with a written decision with reasons and the resulting direction if applicable.

33. OFFICIAL LANGUAGES

- a) An appellant may ask that the appeal proceeding, including the hearing, be held in the official language of the appellant's choice, in accordance with the *Official Languages Act*. At the time of filing the appeal, the appellant must indicate whether the appellant wishes to have the proceeding and hearing in English or in French.
- b) The Tribunal provides services in both official languages and all documents originating from the Tribunal are available in both English and French.
- c) Documents may be filed in either official language. The Tribunal does not translate the documents that have been submitted by the parties or any participant to the proceedings.
- d) A party requiring simultaneous interpretation in an official language, either for a party or a witness, must inform the Tribunal of this need as soon as possible and no later than one (1) month before the scheduled hearing date.
- e) The appeal officers' decisions are published simultaneously in both official languages on the Tribunal's website and on the Canadian Legal Information Institute's website (CanLII).

34. JUDICIAL REVIEW

- a) Decisions rendered by an appeals officer are final. The decisions may not be appealed, but may be subject to judicial review on very limited grounds (subsection 18.1(4) of the *Federal Courts Act*).
- b) Applications for judicial review must be filed in accordance with the *Federal Courts Act* and the *Federal Courts Rules*. The party making the application is responsible for complying with all Federal Court procedures and time frames.