

**ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 21**

OCCUPATIONAL HEALTH AND SAFETY ACT

APPEALS OF AN INSPECTOR'S ORDER

GENERAL

This Information Bulletin describes what happens when an employer, constructor, licensee, owner, worker or trade union applies for an Appeal of an Inspector's Order (Field Visit/Report) under Section 61(1) of the *Occupational Health and Safety Act* (the "Act").

The Ontario Labour Relations Board (the "Board") is responsible for processing and determining appeals. Appeals are determined through a process of consultation or hearing before the Chair or a Vice-Chair of the Board. Applications for Suspensions of Orders until the Appeal is decided are also heard by the Board (see Information Bulletin No. 22).

HOW DO I APPEAL?

Appeals must be in writing, made on Form A-65. **Please note that your appeal must be filed with the Board within thirty calendar days after the making of the order. Appeals may NOT be filed by facsimile transmission, e-mail or registered mail.**

Please ensure that the Appeal Form is complete. Give the names, addresses, phone and fax numbers of all the persons, unions or companies who may be affected by the appeal. Attach the Order(s) (Field Visit/Report) which you are appealing. Incomplete forms or missing information may delay the processing and hearing of your appeal.

WHO IS THE RESPONDING PARTY?

If you are an **Employer**, the responding parties are the employer's workers and each trade union representing any of the workers. If you are a **Worker** or a **Trade Union**, the responding party is the employer. If you are a **Constructor, Licensee, or Owner**, the responding parties may be the Employer, the Employer's workers and each trade union representing any of the workers.

A **director under the Occupational Health and Safety Act** is always a party to the appeal. Delivery to the director is made through the Legal Services Branch of the Ministry of Labour, Training and Skills Development, as follows:

TO: Deputy Director
Legal Services Branch
Ministry of Labour, Training and Skills Development
400 University Avenue, 11th Floor
Toronto, ON M7A 1T7
TEL: 416-326-7959
FAX: 416-326-7985

FILING THE APPEAL

Before filing the appeal with the Board, you must deliver an Appeal Package to the responding parties and to any other person whom you identify as potentially affected by the appeal.

The Appeal Package consists of: 1) a copy of the completed application and 2) a Notice of the Appeal (Form C-44). You must fill in your name and the responding party's and Inspector's names on page 1 and the date on page 2 of the Notice before making the delivery.

Other material, including blank Response forms and Information Bulletins are available from the Board (505 University Avenue, 2nd Floor, Toronto, Ontario, M5G 2P1 - Tel. no. [416] 326-7500) or downloaded from the Board's website at www.olrb.gov.on.ca.

The package may be delivered by hand, courier, facsimile transmission, regular mail or any other way agreed upon by the parties.

No later than five days (not including weekends, statutory holidays or any other day the Board is closed) after delivering the Application Package to the responding and/or affected parties, you must file one copy of the appeal with the Board. The appeal may be filed in any way other than by facsimile transmission, e-mail or registered mail. If the application is not filed within five days after delivering the package to the responding and/or affected parties, the matter will be terminated.

WHAT DOES THE RESPONDING PARTY DO?

Once the Board has received the completed Form A-65, the Board will acknowledge that it has received the appeal. The Board will then assign a Mediator to try to settle the matter, and give the Mediator a date by which he/she is expected to report on the status of the mediation (the "report date").

If the Mediator is unable to successfully mediate the appeal by the report date (or any longer period of time granted by the Board), the matter will be set down for a consultation or hearing, and a Notice of Consultation or Hearing will be sent to all the identified parties.

The Response to Appeal must be completed, delivered to the other parties, and filed with the Board by the responding parties and the director **not later than 21 calendar days before the consultation/hearing date**. The Board will extend time frames **for filing** the Response only if it is satisfied that a party cannot reasonably meet them.

WHAT IS MEDIATION?

The Mediator assigned to the appeal will contact the parties (by phone or letter) to set up a mediation meeting. The purpose of the meeting is to try to help the parties settle the appeal and avoid a hearing. The Mediator may also try to settle the matter over the telephone.

Mediators do not decide the case. They do not represent any of the parties in the case, nor do they act as advisors to any of the parties in the case. Mediators are professionals whose role is to help the parties settle the issues in dispute. To encourage open discussion among the parties, Mediators consider everything said within the mediation to be confidential.

During mediation, the Mediator may bring the relevant case law to the parties' attention. This is done to help the parties realistically assess their positions. It is not to be considered legal advice.

If the mediation is unsuccessful, the Appeal will be scheduled by the Board for a consultation or a hearing.

WHAT IS A CONSULTATION?

A consultation is different from a hearing. A consultation is meant to be more informal and less costly to the parties than a hearing, and the Chair or Vice-Chair plays a much more active role in a consultation than a hearing. The goal of a consultation is to allow the Chair or Vice-Chair to expeditiously focus in on the issues in dispute and make any interim or final orders he/she considers appropriate.

While the precise format of a consultation varies depending on the nature of the case and the approach of the individual adjudicators, there are some universal features. To draw out the necessary facts and arguments, the Chair or Vice-Chair may: 1) question the parties and their representatives; 2) express views; 3) define or re-define the issues; and 4) make determinations as to what matters are agreed to or are in dispute. The giving of evidence under oath and the cross-examination of witnesses are normally **not** part of a consultation, and when they are, it is only with respect to those matters that are defined by the Chair or Vice-Chair.

A consultation is normally scheduled for one day, and a decision with brief reasons is made either at the consultation or is issued afterwards. The decision will have one of four results: 1) the Board may exercise its discretion not to inquire further into the appeal; 2) it may dismiss the appeal on its merits; 3) it may grant the appeal; or 4) in limited circumstances, it may schedule it for a full hearing before the Board.

WHAT HAPPENS AT THE HEARING?

If the Board schedules a hearing in an Appeal, the hearing will commence before the Board on the date set out in the Notice of Hearing. Parties are entitled to be represented by a lawyer or representative at the hearing. The Board will not provide a lawyer for you.

The hearing is a legal proceeding to determine your rights and obligations under the Act. *If you do not attend, the hearing will proceed without you and your rights and obligations will be determined in your absence.*

Sometimes it is impossible for a party to come to the hearing on the date it is scheduled. Except in extreme circumstances (for example a family emergency or illness), the Board expects the party seeking an adjournment to contact the other parties and request their consent to the adjournment. If all parties do not agree to the adjournment, you must make your request in writing addressed to the Board's Registrar. A decision will be made by the Board. Where an adjournment is necessary please give the Board and the other parties as much advance notice of your request as possible. Otherwise, there may not be enough time to process the request before the hearing.

Each party must file with the Board not later than ten days before the first date set for hearing or consultation two copies of all documents upon which it will be relying in the case. At the same time, each party must deliver copies of those documents to each of the other parties. Documents filed with the Board must be arranged in consecutively numbered pages and must be accompanied by a table of contents describing each document.

You must also arrange to have any witnesses you intend to call on to give oral testimony present at the hearing. If you are not sure that a witness will attend, you may request a summons from the Board ordering his/her attendance and ordering him or her to bring any documents which are relevant to the appeal. It is your responsibility to serve the summons before the hearing commences and to ensure that it is served correctly - it must be served in person and be accompanied by the required payment for attendance.

If you are the Appellant, you will be asked to make a brief opening statement explaining what you are seeking and why you think the Occupational Health and Safety Inspector was wrong. The Ministry of Labour, Training and Skills

Development and the other workplace party will then explain their positions. Unless there is agreement on the facts, evidence will be presented through the testimony of witnesses, and the introduction of relevant documents. In most circumstances, the Appellant's evidence is presented first. Occasionally, the Ministry or the other workplace party will be asked to proceed first.

The Board must decide the case based only on evidence presented at the hearing. You cannot provide additional information after the hearing is completed unless you are requested to do so by the Board. You may not communicate privately with the Board about the case before, during or after the hearing.

DECISION

The Board's decision is final and binding. There is no appeal from the decision. You may make an application for judicial review of the decision where you feel the decision was patently unreasonable or made outside the Board's jurisdiction. Judicial review applications are heard by the Superior Court of Justice, Divisional Court.

The Board is not responsible for enforcing its decisions. If you encounter difficulties in that regard you should seek assistance from the Ministry of Labour, Training and Skills Development, Occupational Health and Safety Branch. The Board's decisions may be filed with the Superior Court of Justice and are enforceable as orders of that court.

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest at www.olrb.gov.on.ca.

IMPORTANT NOTE

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.