

## **PREPARING FOR AN ORAL HEARING BEFORE THE COMMUNITY CARE AND ASSISTED LIVING APPEAL BOARD (CCALAB)**

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This is an information document designed to assist you in preparing for your hearing before the CCALAB. It is not intended as a substitute for the *Community Care and Assisted Living Act* or its Regulations, the *Administrative Tribunals Act* or the CCALAB Rules.

Please note that parties are free to discuss their case and try to resolve the matter on their own before the hearing. The CCALAB encourages parties, wherever possible, to communicate directly with one another throughout the process in an effort to resolve some or all of the issues before the hearing starts.

If you are the appellant or person bringing the appeal, you have what is known as “the burden of proof” in the appeal. This means that in order to be successful in your appeal, you must prove to the satisfaction of the panel hearing your appeal that the decision under appeal was not justified.

If you are the respondent in an appeal, you will be expected to provide evidence that supports the original decision. If you believe there are problems with the appeal (e.g. no decision has been made which can be appealed or the appellant does not have standing to bring an appeal, etc) you should bring your concerns to the attention of the CCALAB as soon as possible before the hearing.

The only information the tribunal will consider in an appeal is the information that the parties present to it. Therefore, everything that you think is relevant to the case should be given to the tribunal and the other party either as soon as possible before, or during, the appeal hearing.

### **How do I prepare for the Hearing?**

1. Think about what you really want from this case. Make sure you know what it is you want the Community Care and Assisted Living Appeal Board to decide in your favor. It is useful to itemize at the outset what you want out of the appeal. You need to have a clear understanding of the issues to be decided in the appeal and then concentrate on gathering the information you need to build a strong and convincing case to bring before the panel.
2. **Evidence.** Evidence is whatever you will use at the hearing to prove your case. You have to think about it as soon as possible, so that you can be prepared at the hearing. There are several kinds of evidence, including:
  - oral testimony: a witness comes and makes a statement or answers questions at the hearing (in many CCALAB hearings, you, as the appellant or as a representative of the respondent, will be the only witness providing oral testimony.)

- documentary evidence: documents, such as licensing records, letters, reports, etc are presented at the hearing by either a witness or a party and may be entered as exhibits;
- photographs: photographs are sometimes used as evidence if the person who took them can properly identify them and additional copies are provided; and
- affidavit: a witness makes a sworn (i.e. using a Notary Public) statement in writing that is presented to the hearing panel.

Try to break your case down into each of its elements and decide what evidence you will use to prove each one. Using the notice of appeal and other documents and evidence you intend to present, this should form the basis of your Statement of Points, which you will file with the tribunal prior to the hearing, and which you can also use at the hearing as your speaking notes or a guideline for giving your oral testimony at the hearing.

Check to ensure that you are providing sufficient evidence to establish what you want the panel to decide.

3. **Documents.** You must bring to the hearing all the documents that you will need. Most of the documents that have been filed with the tribunal before the hearing should already be included in your Appeal Book. If you have additional documents to file at the hearing, you also need to bring extra copies for the hearing panel and the other party(ies) to the appeal. Any new documents will be entered as exhibits at the hearing. You will need to be very familiar with the documents you will use at the hearing. Whenever you or another witness refers to a document in the hearing, you must be able to direct the panel to a copy of that document in the materials filed so that the panel can follow along.
4. **Your role at the hearing.** You may be the main or only witness for your case and you may be asked to simply tell your story. So prepare what you will say. Usually the best way to organize a story is in the order that the events actually happened. Think about how you would explain the case to another person who doesn't know you or the issue(s) involved. Use your Statement of Points and speaking notes to list all of the points you wish to cover. ***The CCALAB hearing panel will make its decision based only on the arguments and evidence it hears at the hearing – make sure you say and produce everything you think might be necessary to prove your case.*** Have a brief opening statement (what you believe the appeal is about and what you want the CCALAB to do) ready to present at the beginning of the hearing, as a summary of what you will try to prove at the hearing.
5. **Witnesses.** It is up to each party to decide whether to ask other people to come to the hearing to testify as a witness, in addition to themselves. The parties should approach the people they want as witnesses as early as possible to ensure the person is able to attend the hearing on the scheduled date. Witnesses must have a personal, first-hand knowledge of the facts

you want them to tell the hearing panel about. Hearsay evidence is something that the witness only knows about from hearing someone else say it and, if allowed, will normally not be given much weight by the panel in its decision.

6. **Expert Witnesses.** Experts are the only witnesses who are allowed to give evidence about their opinions. This can include doctors, accountants, scientists, other professionals or people who have had a lot of experience in their field. There are special rules and deadlines for expert witnesses. If you think you will be calling an expert witness, please notify the CCALAB office immediately to discuss what you need to do.
7. **Preparing Witnesses.** Think carefully about what questions you will have to ask your witness in order to get the evidence you need, and write the questions down. Don't ask questions that suggest the 'right' answer. These are called 'leading' questions. For instance, don't ask, 'Was the light red?' Instead ask, 'What color was the light?' Do review the questions with your witnesses beforehand. It is all right for you to discuss the case with them, but you must not tell them what to say. If your witness refuses to attend the hearing voluntarily you may contact the CCALAB to obtain a summons form to issue to your witness. A summons requires a person to attend at a hearing to testify. You are responsible for filling out the summons form and serving it on the person. The person summoned to attend the hearing may ask the tribunal to "vacate" (cancel) the summons.
8. **Cross-examination.** After you have asked your witness questions, the other party and the hearing panel will ask questions of the witness. (You also get to do this with witnesses called by the other party.) Sometimes cross-examination can be difficult to do. If you need time (i.e. a break) to prepare your questions, you should let the panel know. Similarly, if you are the only witness in your case, after you have made your statement or told your story to the panel, the other party will have a chance to 'cross-examine' you, or to ask you questions.
9. **Keeping track of what's happening during the hearing.** It's not easy to be speaking, acting as a witness, answering questions, cross-examining other witnesses and listening to what another party is saying. If you can, have someone attend the hearing with you to sit beside you and take notes of what's happening. This will help you to keep track of what's going on and help you decide what points (i.e. in response to something someone else has said) you want to bring up later in the hearing. *If you're having trouble keeping up, ask the panel for an explanation or a break so that you can collect your thoughts.*
10. **Hearing preparation checklist.**
  - Review the notice of appeal and any other relevant documents.
  - Review the results of the pre-hearing conference if there was one.
  - List what remedies you want from the CCALAB.
  - List the points you need to prove to win the appeal.

- Consider how you will prove each one (testimony, documents, photos, etc).
- Gather the documents you need and organize them in logical order so you can easily refer to them at the hearing and be able to point the panel to the documents as you go along.
- Prepare your statement or outline for your own oral testimony.
- Contact any additional witnesses you decide are necessary.
- Prepare questions for your witnesses and review them together with the witness.
- Prepare a list of potential questions for cross-examination of the other party's witnesses.
- On your hearing date, plan to arrive well ahead of the scheduled time so that you will be relaxed and ready to begin.

11. **The Hearing.** The CCALAB attempts to keep the proceedings as informal and relaxed as possible under the circumstances. The appellant will present his or her arguments and evidence to the panel first. The respondent will then make its submissions and present its evidence to the panel in support of the original decision.

Hearings are usually held near the facility that is the subject of the appeal or in the appellant's home community. The hearings are open to the public and therefore members of the public are welcome to attend, unless the hearing panel determines that all or a portion of the hearing should be closed. Participation in the appeal, however, is restricted to the parties and their witnesses. A court reporter may be present to keep a record of the hearing. No other recording of the proceedings by the parties is allowed.

The hearing process will be determined by the panel presiding at the appeal and may vary in each individual case, but will generally be conducted as follows:

- The Chair of the hearing panel will call the hearing to order. The Chair will introduce the matter and the panel who will hear it and deal with any preliminary matters such as time limits, breaks, questions etc. The Chair will then invite those parties in attendance to introduce themselves for the record.
- The appellant and then the respondent will each make a brief opening statement, describing their presentation to the panel, the witnesses to be called and outlining the remedy they are seeking from the CCALAB. This is optional and the parties may choose not to present opening statements.
- The appellant and respondent, in turn, present their evidence (including their own testimony and calling any other witnesses). Witnesses may be asked to give their evidence under oath or to affirm that the testimony given will be true. Following the testimony of each witness (including the parties), the opposing party may cross-examine or question the witness, followed by questioning by the members of the panel. After

any questions by the hearing panel, the person calling the witness will have the opportunity to ask any further 'questions arising'.

**Note:** The hearing panel may, at its discretion, require witnesses to absent themselves from the hearing room until after they have presented their evidence.

- Following the presentation of evidence, the appellant and respondent, in turn, will present their closing arguments and again outline the remedy they are seeking from the CCALAB. In some cases the panel may require the parties to file their closing arguments in writing after the hearing.
- The panel Chair will then close the hearing and the participants will leave the hearing room. The panel will convene alone to discuss the case and deliberate on their findings.
- After the oral hearing is completed, the panel may find that further information is required from one or more of the parties in order to make a decision on the appeal. If the panel requests additional information, all parties will have an opportunity to respond to that information.
- The panel will reserve its decision and written reasons for the decision will be provided to the parties at a later date and as soon as practicable after the hearing. After the parties have received the decision, a copy may be posted on the board's website.