

Guide for Self-Represented Applicants



Transportation Appeal Tribunal of Canada

January 2017

— Foreword —
Who is this Guide Intended for?

The Transportation Appeal Tribunal of Canada (the “Tribunal”) has prepared this guide in order to provide useful and accessible information on its hearing process.

The information presented in this guide is most relevant to those who have received notice of an administrative action taken against them by Transport Canada (TC) and who are seeking an independent review of that decision.

Parties appearing before the Tribunal have the right to be represented by a lawyer or any other person, or they may choose to represent themselves. This guide is intended to help self-represented applicants become familiar with the steps involved in having their case heard.

Note that this guide does not cover all situations dealt with by the Tribunal. Rather, it covers only situations where applicants are often self-represented, such as cases involving enforcement actions, licensing issues and medical certificates in the aviation and marine sectors.

Legal Notice:

This guide does not constitute legal advice. It is only intended to help self-represented applicants familiarize themselves with the Tribunal and the hearing process. Applicants wishing to obtain legal advice should contact a lawyer.

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— Part 1 —

About the Transportation Appeal Tribunal of Canada

The Transportation Appeal Tribunal of Canada provides members of Canada’s federally-regulated transportation community with the opportunity to have certain administrative actions that affect their activities reviewed by a specialized independent body.

The Tribunal’s mandate is to provide a fair hearing process for the **applicant** (the party who requested the review) and the **respondent** (the party representing the Minister of Transport, who officially took the administrative action coming under review). The Tribunal hears the cases brought before it and determines whether or not the Minister’s administrative action was justified.

The Tribunal **registry** is located in Ottawa but hearings are held across the country, usually where the event giving rise to the administrative action took place.

The Tribunal’s role

After the Tribunal registry receives your request for review of the Minister’s decision, a **registrar** schedules a hearing and becomes your primary contact for all administrative aspects of your case.

The Tribunal **member** is the person who will hear your case and make the determination with regard to the administrative action under review. Members of the Tribunal have expertise in the modes of transport within the Tribunal’s jurisdiction. For medical matters, the member who is assigned to hear the case is also a practicing or retired physician.

What is an administrative action?

This can be a fine, a suspension or cancellation of a licence, a limitation on a medical certificate or a refusal to issue a medical certificate.

The administrative action is stated on the notice or letter from Transport Canada. It can also be referred to as the “Minister’s decision”.

Is there a service fee?

There is no cost to the applicant to have a case heard by the Tribunal. However, travel expenses to the site of the hearing are the responsibility of the parties and no assistance will be provided by the Tribunal.

If you have any questions or concerns about the Tribunal and hearing process, please contact us. We can help with administrative and logistical matters, however we do not provide legal assistance. Please consult with a lawyer for any legal questions you may have.

Review by the Tribunal

Review hearings are conducted by one Tribunal member and are reviews of administrative actions taken by the Minister of Transport under various pieces of federal transportation legislation. Administrative actions, or “Minister’s decisions”, that the Tribunal has jurisdiction to review fall under the following areas:

- **Enforcement:** the Minister’s decision to issue a notice following, for example, an alleged contravention of an act or regulation;
- **Licensing:** the Minister’s decision to suspend, cancel or refuse to issue, amend or renew a Canadian aviation or maritime document; and
- **Medical:** the Minister’s decision to suspend, cancel or refuse to issue, amend or renew a medical certificate, or to impose limitations on a medical certificate, on the basis that the document holder is unfit to carry out his or her duties, or has limited capacity to do so.

At the review hearing, both parties have the opportunity to present witnesses as well as physical and documentary evidence. Both parties may also cross-examine the opposing party’s witnesses and present arguments. After the hearing, the member who conducted the review must render a **determination** that includes written reasons.

In summary, the review process is as follows:



Possible outcomes of a review

The various pieces of legislation that give the Tribunal the jurisdiction to review administrative actions also specify what the Tribunal can or cannot decide at the end of the hearing process.

One possible outcome of a review is that the Tribunal agrees with the administrative action taken against you and **confirms the Minister’s decision**.

The other possible outcome is that the Tribunal disagrees with the administrative action taken by the Minister. Depending on the particular legislation that applies to your case, the Tribunal's determination may be to:

- **refer the matter back to the Minister for reconsideration** in cases such as those relating to licensing matters and medical certificates; or
- **substitute its own determination** in cases such as those relating to fines.

If you request a review of the Minister's decision, you should understand that the possible outcomes will fall within the Tribunal's powers as outlined above. Also, keep in mind that at any point in the process, you may reach an agreement with Transport Canada and withdraw your request for a hearing.

Applying for a review

Applications for a review hearing must be made in writing to the Tribunal within the timeline appearing on the notice or letter from Transport Canada (usually 30 days from the date of the notice or letter). Applications should include:

- your name, address, and telephone number;
- a copy of the notice or letter from Transport Canada; and
- your choice of language in which the hearing is to be held (English or French).

Applications can be sent to the Tribunal in any of the following ways:

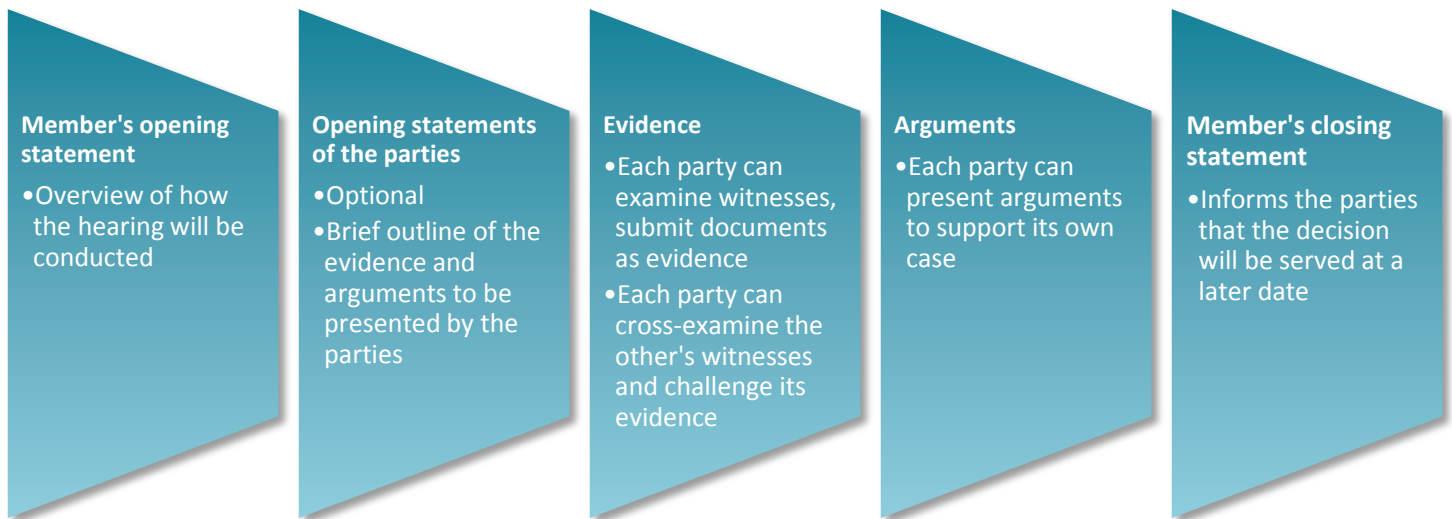
| | |
|-----------------------------------|---|
| By mail, in person or by courier: | Transportation Appeal Tribunal of Canada 333 Laurier Avenue West, Room 1201 Ottawa ON K1A 0N5 |
| By email: | info@tatc.gc.ca |
| By fax: | 613-990-9153 |

If you missed the filing deadline and still wish to request a review, please call the Tribunal registry at 613-990-6906. Depending on what legislation applies in your case, it may still be possible to file a request for review with the Tribunal. Also, please consult the Policy on Late Applications, which is published on the Tribunal's website at www.tatc.gc.ca.

— Part 2 —

About Review Hearings

Review hearings provide an opportunity for the two parties involved in a case (the applicant and the respondent) to present testimony, evidence and arguments regarding their case to a Tribunal member. Although not as formal as regular court proceedings, hearings before the Tribunal have the following set structure:



Opening statements

In his or her opening statement, the Tribunal member will typically present how the hearing will unfold and provide an overview of the process. The member will also ask the parties if there are any preliminary matters, or “motions”, to be addressed. These are specific requests or issues which need to be addressed before the main issue at hand. It is important to note that only minor preliminary matters can be addressed at the hearing. Any preliminary matters that could result in adjourning (postponing) the hearing, such as the availability of witnesses and matters of jurisdiction, should be addressed in advance of the hearing if possible.

The member will then provide the parties with the opportunity to make their opening statement. The Minister has the first opportunity and the applicant may choose to follow or not. Making an opening statement is entirely optional. An opening statement should be short (no more than a few minutes) and to the point: a brief summary of your position on the matter under review, including a statement about the key evidence and main arguments you will be presenting.

Evidence

The main part of the hearing is the presentation of evidence by the parties. There are essentially two forms of evidence: testimonial evidence, and physical and documentary evidence. **Testimonial evidence** can include testimony from a person who has first-hand knowledge of the facts of the case (ordinary witness) or specialized technical knowledge (expert witness). **Physical and documentary evidence** can include medical records, flight records, official documents and correspondence, photographs, maps, and anything else that may pertain to the case. Evidence of this type is entered into the case record as an **exhibit**.

If you intend to present evidence at the hearing, preparing it may include gathering physical and documentary evidence that supports your case, or contacting **ordinary** and/or **expert** witnesses to testify on your behalf.

In cases where it is necessary for you to summon a witness who is unwilling to testify, the Tribunal can provide you with the necessary form to do so. For more information, please contact the registrar assigned to your case.

You should be aware that you will have to cover any costs involved in bringing a summoned or expert witness to the hearing.

Admissible evidence

To be admissible at the hearing, evidence must be **relevant** and **reliable**. Within the context of the Tribunal, these terms have a specific meaning:

Relevant — The evidence must be relevant to the hearing: it must tend to prove or disprove a fact at issue.

Reliable — Oral testimony given under oath has a degree of reliability, but it is the Tribunal member's role to determine how much, based on his or her assessment of the witness's credibility. At the Tribunal, hearsay evidence (the testimony of a witness based on what others have said to them) is allowed, but such evidence can be assigned less weight, or no weight at all, depending on the circumstances. With regard to a piece of physical and documentary evidence, its reliability is mostly dependent on its nature (what kind of item or document it is) and its source (where it comes from).

Ordinary and expert witnesses

Whereas **ordinary witnesses** generally provide a narrative account of the facts and events relating to the case, **expert witnesses** provide their opinion on technical matters within their area(s) of expertise. Both types of witnesses can answer questions relating to pieces of physical or documentary evidence that are presented to them.

Parties should also be aware that ordinary witnesses must be excluded from the hearing room until they testify, whereas expert witnesses can remain present throughout the proceedings.

If the member deems the evidence presented at the hearing to be relevant and reliable, he or she will admit it but can still determine how much weight to give it based on the strength of these two factors.

Disclosure

You have a right to know the evidence that the Minister will use to prove his or her case. This means that the Minister's representative must provide you with all evidence in his or her possession or control that is relevant to your hearing. This is generally provided in the form of a disclosure package sent to you by the Minister's representative, who must provide it to you in a reasonable amount of time before the review hearing to allow you to prepare your case. In addition to the evidence, the disclosure package should include a list of the witnesses that the Minister will be calling to testify. As an applicant, you are not required to disclose evidence to the Minister.

Burden of proof and standard of proof

The **burden of proof** is the duty that a party has to prove or disprove something. At the review stage, the burden of proving the case is on the Minister rather than the applicant. The Minister has to prove that the administrative action taken is justifiable in law.

The **standard of proof** has to do with the degree of certainty that the proof must provide. The only standard of proof that applies in hearings before the Tribunal is **proof on a balance of probabilities**. This means that a fact will be considered to be proven if it is seen as more likely to be true than not.

Evidence at the hearing

The Minister's representative opens the Evidence portion of the hearing by calling witnesses and introducing evidence as to the reasons for the administrative action taken by the Minister. In doing so, the Minister's representative conducts the **examination** (also called the "examination-in-chief") of his or her witnesses: after being sworn in or affirmed, the witnesses are asked questions about events relating to the case or the exhibits (pieces of physical or documentary evidence).

Each time the Minister's representative has finished examining a witness, you have the opportunity to **cross-examine** the witness. This means that you can ask the witness your own questions about the facts or events of the case or about the evidence that was introduced on behalf of the Minister. After your cross-examination, the Minister's representative can choose to **re-examine** the witness by questioning the witness on any point you raised during your cross-examination.

Once the Minister's representative is finished examining witnesses and presenting evidence, you have the opportunity to present your own evidence.

If you are bringing witnesses to testify at the hearing, you will be responsible for examining them. This means that instead of having the witness deliver a statement, you must ask him or her questions to bring out testimony on the facts of the case or on the physical or documentary evidence. You should also be aware that your witnesses can also be cross-examined by the Minister's representative (after which you can also re-examine them).

Important note:

You must bring **four copies of any documentary evidence** you plan to introduce at the hearing.

If you testify on your own behalf at the hearing, you will be sworn in or affirmed as a witness. If you are self-represented, you will then deliver a statement instead of responding to questions as other witnesses would. Once your testimony is over, the Minister's representative will be allowed to cross-examine you, as he or she would be allowed to do with any other witness.

Arguments

After all witnesses have testified and all physical or documentary evidence has been introduced, the member will provide both parties with the opportunity to present their arguments (this is also referred to as the "closing arguments"). Arguments are statements made to persuade the Tribunal member of a party's view of the case or to lead the member to reach a particular conclusion. As with the Evidence portion of the hearing, the Minister will have the first opportunity to make arguments.

Evidence is different from argument. During the Evidence portion of the hearing, if you choose to be heard as a witness, your testimony will be an opportunity for you to recount the facts and events related to the case (in other words, "your side of the story") and to introduce your physical and documentary evidence. During the Arguments portion of the hearing, you will attempt to convince the member of your position with regard to the issue at hand.

Whether you choose to testify or not in the Evidence portion of the hearing, you will still be entitled to present arguments in this part of the hearing. However, you will only be able to rely on the evidence that has already been introduced at that point. Any evidence you attempt to introduce while making your arguments will not be taken into consideration. Similarly, you will not be able to refer to any new fact, information or document on which the Minister has not had the chance to cross-examine you.

Discussion of sanction

In enforcement matters, what is called the sanction can be a fine (also referred to as an administrative monetary penalty or “AMP”) or a suspension. The amount of the sanction—or its length, in the case of a suspension—is stated in the notice or letter you received from Transport Canada. At the hearing, following arguments, the member may ask the parties to address the sanction. This is an opportunity for you to give reasons why your sanction, if it is upheld by the member, could be reduced.

Closing statement

Following the parties’ arguments or discussion of sanction, the member will make a closing statement thanking the parties for their participation and advising them that his or her decision will be reserved and served to them at a later date in a written determination.

— Part 3 —

After the Review Hearing

Following the review hearing, the member will render a determination, which the Tribunal sends to the applicant by registered mail once it is written and formalized. The Tribunal strives to issue determinations within 90 days of the hearing. The determination contains a summary of the testimony, evidence and arguments presented at the hearing, the member's reasons and his or her determination regarding the administrative action (the fine, suspension, limitation, etc.) under review.

If the member confirms the administrative action taken by the Minister, you will have to comply with the terms of the review determination, or file an appeal with the Tribunal within 30 days.

If the member determines that the administrative action was not justified, what action the member can take is determined by the applicable legislation (as explained in the *Possible outcomes of a review* section above). In cases where the member has the option of voiding the Minister's decision and replacing it by his or her own, this can mean, for example, that the penalty is reduced, dismissed, or possibly increased.

In other cases (where the member cannot replace the Minister's decision by his or her own but may refer the matter back to the Minister for reconsideration), the Minister's original decision normally remains in effect until the reconsideration is concluded.

Appealing the review determination

If you believe the Tribunal member's determination is incorrect in law or fact and you wish to appeal it, you must file a request for an appeal with the Tribunal within **30 days** of the date on which the review determination was served to you. You should note that, in certain cases, the Minister also can appeal the review determination. This second level of hearing, usually heard by a three-member panel, is a review of the determination rendered by the Tribunal member at the review level.

The member who conducted the review hearing will not be involved in the appeal hearing. The appeal panel will consider the transcript of the review hearing and the evidence presented at that time. **The only new evidence that may be introduced at the appeal hearing is evidence that was not available at the time of the review hearing. This new evidence may or may not be accepted at the discretion of the appeal panel.** At the appeal hearing, both parties are entitled to make arguments regarding the review determination and the administrative action.

Following the appeal hearing, the three-member panel must provide a decision, including written reasons, to both parties.

Judicial review by the Federal Court

If you are not satisfied with the final outcome of the Tribunal's hearing process, that is, after both a review and appeal hearing have been held and a final decision has been rendered, you may choose to have your case judicially reviewed by the Federal Court. For information on this process, please contact the Federal Court.

Checklist — Preparing for Your Hearing

To do before the hearing:

- ☐ File any preliminary motions with the Tribunal (only minor issues should be left for the day of the hearing)
- ☐ Review the Minister's disclosure package
- ☐ Prepare questions for the cross-examination of the Minister's witnesses

If you choose to give evidence:

- ☐ Gather and organize your physical/documentary evidence
- ☐ Contact witness(es); contact the registry with regard to summoning witness(es), if applicable
- ☐ Prepare questions for the examination of your witness(es)

If you choose to testify:

- ☐ Prepare your testimony

If you choose to give arguments:

- ☐ Prepare your arguments

If you choose to make an opening statement:

- ☐ Prepare your opening statement

What to bring to the hearing:

- ☐ Any evidence to be presented
- ☐ Four copies of any evidence that can be photocopied
- ☐ Any notes, lists of questions you have prepared