JUSTICE EDUCATION SOCIETY

Making an Effective Tribunal Presentation

The first thing you should do to prepare for your hearing is to read the self-help information on the tribunal's website or call the tribunal's office to ask for information about the process.

In general, your first task is to present the relevant facts — that is, the evidence that supports your case. The second task is to make submissions about the evidence — that is, tell the adjudicator what conclusions you want them to draw from the evidence that you presented. The third task is to describe how the law supports your case. The final task is to explain how all of this should result in the adjudicator making a decision in your favour. The usual steps in a tribunal hearing are:

- Preliminary matters
- Opening statements
- Submission of evidence
- Closing arguments

Preliminary matters

The people at the hearing will start by introducing themselves. Some adjudicators are addressed as "Madam/Mister Adjudicator", "Mister/Madam Chair", and some are addressed as "Honourable Member". It is a good idea to ask the adjudicator how he or she would like to be addressed during the hearing. Everyone else at the hearing is addressed as Mr., Ms., or Mrs., including the other parties and witnesses (even if you know the witnesses and normally address them by their first name). The adjudicator may summarize the issues to be decided at the hearing. He or she will generally review the rules and procedures to be followed at the hearing.

Opening statements

The party who started the administrative hearing process usually makes their opening statement first, followed by the other party. The purpose of the opening statement is to:

- Describe your case very briefly
- Tell the adjudicator what remedy, decision, or outcome you are seeking
- Outline the main points of your case

- Tell the adjudicator what evidence you will be submitting (you do not actually submit your evidence at this point)

Submission of evidence

Evidence is an actual physical object, such as a document, that you bring to the tribunal hearing to prove your case. Evidence can also be what you (or your witnesses) have to say about the facts of your case. It is all the information that the adjudicator needs to understand the facts that support your case.

The party who filed the complaint or appeal usually goes first. This is the most important part of your case because you will be demonstrating to the adjudicator that you have evidence that supports your claim. After you have been "sworn in" (that is, you swear or affirm to tell the truth), you will tell the adjudicator about your case, including the facts of your case and the evidence that supports those facts. For example, if you were in a dispute with your landlord for late payment of rent, you would tell the adjudicator the date on which you gave the landlord the rent cheque, and bring proof of the cancelled cheque to the hearing.

Calling witnesses

You can call witnesses to give evidence that supports your case. For example, if someone else were with you when you gave the rent cheque to the landlord, you would call that person as a witness because the adjudicator wants to hear the evidence directly from the person who witnessed the event. Often, your witnesses cannot be in the hearing room until it is time for them to give evidence. This ensures that their evidence is untainted by hearing your evidence and the evidence of other witnesses.

Your witnesses should be able to provide the adjudicator with direct evidence about your case. In other words, it is best if they have first-hand knowledge of the facts they are telling the adjudicator.

If the evidence is not direct, it is "hearsay" and while it may be accepted as evidence by the adjudicator, it may not be given as much weight. For example, you should not bring your wife to give evidence that you told her that Fred was with you when you gave the cheque to the landlord on June 1. Instead, Fred himself should come to the hearing to tell the adjudicator that he saw you give the cheque to the landlord on that date.

How your witness gives evidence

After your witness has been "sworn in" (that is, he or she swears or affirms to tell the truth), your witness gives evidence by answering your questions. You should "prepare" your witness before the hearing, by reviewing the facts that you would like him or her to tell the adjudicator. You should not tell the witness how to answer the questions, just what questions you will be asking. Your questions can be simple and direct, such as, "Could you tell the adjudicator what happened on June 1, 2008?" Or, your questions can ask for more detailed information, such as, "Did you see Mr. Brown sign this document?"

It is not appropriate to ask your witness "leading questions", which are questions that provide the answer to the witness. For example, you should not say: "You saw me give the rent cheque to the landlord on June 1, 2008, didn't you?" because it suggests to the witness that he or she should agree with you. Instead, you would say: "Have you ever been with me when I went to my landlord's house?"; "What day did we go there?"; "Could you please describe what happened when we went to the landlord's apartment?" These types of questions give the witness an opportunity to answer the questions in his or her own words.

If the information you are seeking from the witness is simply informative and non-controversial (such as his or her address and occupation), or the adjudicator approves such questioning, you can lead the witness through those questions as follows: "Mr. Brown, you are an electrician and you live at 123 Main Street in Vancouver, is that correct?"

When the witness tells his story or answers questions, he or she should speak directly to the adjudicator, not to the person asking the question. Do not interrupt a witness who is giving evidence, unless the witness is not answering your question or is saying things that are not relevant. The other party gives evidence to support his or her case and you have the right to cross-examine them (i.e., ask them questions). The adjudicator may ask his or her own questions.

Cross-examining witnesses

You will have an opportunity to cross-examine the other party and his or her witnesses. Similarly, the other party will have an opportunity to cross-examine you and your witnesses. The purpose of cross-examination is:

- To get testimony from the other party's witness that supports your own case; and
- To discredit the witness (i.e., make the witness's evidence look less believable or reliable).

The scope of questions in cross-examination is broad. You can ask any questions that are relevant to the case, as long as you do not harass the witness. Unlike direct examination of your own witness, you may ask the witness leading questions during your cross-examination. Your cross-examination can focus on these areas:

- Showing that the witness favours the other party (i.e., he or she is biased)
- Showing that the witness has contradicted himself or herself in previous statements
- Challenging the witness's memory on certain points
- Challenging the witness's version of events

Objecting to questions

You can object to a question being asked of you or your witness. For example, if you or your witness is asked a question that you believe is not relevant to the matter before the adjudicator, you can tell the adjudicator that you object to the question being asked, and explain why. If the adjudicator agrees that the question is not relevant, you will not have to answer it. But if the adjudicator disagrees, you will have to answer it. The other parties give evidence to support their case and you have the right to ask them questions. The adjudicator may ask his or her own questions.

Introducing documents

You may have documents that support your case. For example, you may want the adjudicator to see contracts, invoices, cancelled cheques, photographs or other important, relevant documents. You must submit your documents to the adjudicator and to the other parties well before the hearing. If the adjudicator allows you to submit documents later, such as the day of the hearing, you will probably have to send them by fax. The tribunal's rules will give you guidance on matters such as:

- How to notify the other party that you will be introducing documents into evidence
- How to introduce them as exhibits at the hearing
- How many copies to bring
- Who numbers the documents
- What page size to use

When you want to put a document into evidence so you can talk about it to the adjudicator, you should describe the document you are referring to and ask the adjudicator to mark it as an exhibit.

For example, if you are referring to your tenancy agreement, say something like this: "I have a tenancy agreement between Mr. Smith, the landlord, and me, dated March 1, 2003. It is behind Tab #1 in the binder of documents I submitted. I would like the tenancy agreement marked as Exhibit A."

As with oral evidence, you can request that a document not be entered as an exhibit. For example, you could object to the other party entering a letter from you if you believe that it is not relevant to the dispute. You can tell the adjudicator that you object to the document being entered as an exhibit, and explain why. If the adjudicator agrees with you, the document will not be accepted into evidence. If the adjudicator disagrees, the document will be marked as an exhibit.

Closing arguments

Your closing argument is very important because it sums up your case and explains why the case should be decided in your favour. To the extent possible, you should prepare your final submissions in advance, and they should include the following points:

- A summary of your evidence and how it supports your case
- A review of the other party's evidence and how it does not support his or her case
- An explanation of the law (i.e., legislation and other tribunal decisions) and how it applies to your case
- The decision you would like the adjudicator to make

Note: You CANNOT submit new evidence in your closing argument. In other words, all your evidence must be submitted when you are making your initial presentation. For example, if the tribunal hearing is to resolve a dispute about non-payment of rent, you may decide to submit your cancelled cheque as proof of evidence that you paid your rent. If so, it must be submitted when you are introducing the evidence to support your case. You cannot submit the cheque when you are making your closing argument. The adjudicator will not normally accept new evidence at this stage of the hearing.

The difference between evidence and argument

It is very important to understand the difference between evidence and argument. Evidence supports the facts of your case. Evidence can be a physical object (like a document) or oral testimony (of yourself or a witness). Argument is the submission you make at the end of your case to persuade the adjudicator to make a decision in your favour. You cannot introduce new evidence when you are making submissions at the end of the hearing.

Remember that your witness is there for the purpose of giving evidence, not to make arguments to persuade the adjudicator to decide in your favour. So, for example, after telling the adjudicator that he saw you deliver the rent cheque, your witness should not go on to say that the landlord is acting unfairly in giving the eviction notice. Those kinds of statements are not evidence — they are the submissions that you (not your witness) should make after all the evidence has been submitted.

After the hearing

The adjudicator may make a decision by giving an oral decision at the end of the hearing and tell you how the matter has been decided. Alternatively, the adjudicator may tell you that he or she will make a decision later and the tribunal registry will mail a written decision to you.

What if I don't agree with the decision?

If you don't agree with the adjudicator's decision in your case, you can sometimes have the decision reviewed. Some tribunals have their own internal review process, followed by an appeal to an independent tribunal. Other tribunals' decisions may be appealed to the courts, by a process called "judicial review". The fact that you do not agree with the adjudicator's decision is not a reason that entitles you to a review by the court — you must show that the adjudicator's process was flawed or that the adjudicator made an error of law, jurisdiction, or fairness.

