

Hearing Information for Self-Represented Applicants

Here is some helpful information for self-represented applicants who are involved in a hearing before the Board. The Board understands that you are not a lawyer and you are not expected to act like a lawyer. This booklet is meant to answer questions that you may have about the hearing process.

How to Prepare for my Hearing

How will I know when my hearing will take place?

The Board will choose a date based on when the parties are available. The Board will write to you with the date, time and place of the hearing. This is called a Notice of Hearing.

The hearing will be held in a place that is close to your home. Hearings can take place anywhere in Ontario.

If you are unable to attend the hearing, you need to ask the Board to change the date of the hearing as soon as possible. This is called a request for postponement. If you do not attend your hearing and you do not have a good reason, the Board may close your file.

What should I be thinking about prior to the hearing?

Think about what you want to tell the Board about your application and how you will explain your side of the story. The Board wants to hear about each one of the issues that is listed in the pre-hearing report. You can think about what you want to say about each issue.

What you say about each issue has to be relevant to your case. Relevant evidence means a fact or thing linked to your issue or dispute. It is relevant because it helps to prove that something happened or did not happen.

Lastly, think about the other party's side of the story. This will give you a better idea of how to prepare your case and how to respond to their arguments.

Do I need witnesses?

Not necessarily. You may be the only witness for your case. You may be the only person who has first hand knowledge of your situation. The question you may ask yourself is: does another person have first hand experience or knowledge of a specific fact or incident that I want the Board to consider? If so, you may ask this person to be a witness for you. Usually witnesses must have first-hand knowledge of the facts they are testifying about.

If you need witnesses to support your case, remember that the Board looks for credibility in witnesses. This means your witnesses should be believable and trustworthy. They can be any person who has specific knowledge of the facts, including professionals and specialists in their field.

Except for applications regarding a complaint against a children's aid society (section 68 of the *Child and Family Services Act*), the Board has the power to ensure that a witness attends its hearings. If you have a witness that is important to your case and you believe this person will not attend the hearing, you may ask the Board to issue a "Summons". A summons is a written order from the Board that tells a person to appear at a hearing. This will ensure that the witness will attend the hearing. You must personally give the Summons to the witness and pay a fixed amount of money. A summons is not required if a witness is willing to attend the hearing. If you need a summons, call your case coordinator and he or she will give you all of the information you need about a summons.

After choosing your witnesses, you should meet with them before the hearing. Make sure they understand why they are attending the hearing. They are coming to the hearing to give testimony to support your case. They have personal knowledge about something that happened or did not happen. You should also prepare a list of questions that you want to ask your witness at the hearing and you should review the questions with your witness before the hearing.

Can I bring a support person?

Yes you can bring a support person to a hearing. If you choose to bring a support person with you, you must understand that your support person does not represent you and does not speak on your behalf. Your support person is not a witness and does not provide evidence at a hearing. Your support person is present at a hearing to provide moral support to you.

What if I have documents?

In addition to your witnesses, you may have documents that you would like the Board to see. Prepare copies of your documents and send them to the Board and the other party before the hearing (usually 10 days before the hearing takes place). All documents must be given to the Board as well as the other party.

Please remember that your documents must be relevant to your application. They may include professional reports, exchange of emails or letters between you and the organization you have named in your application. Newspaper articles and general information obtained from websites or the internet are not considered relevant to your application.

Are Board hearings open to the public?

Board hearings are not open to the public. They are called “in-camera” hearings. This means they are confidential and private. Usually media cannot attend Board hearings. Only persons (Applicant, Respondent, Representatives, Support Persons or Witnesses) involved in a particular case are allowed to participate in Board hearings.

Can Board hearings be recorded?

The Board does not record its hearings. Hearings may be recorded if a party pays for a court reporter. The party who has arranged for the court reporter must also pay for the transcript and may be required to give a copy of the transcript to the other party and to the Board.

Presenting your case at the hearing

Your application will be heard by three Board members. This is called a panel. There will be one Board member who is in charge of the hearing. This Board member is called the presiding member.

Before the hearing starts, the presiding member will ask the witnesses to wait outside the hearing room until they are called to testify. This is to ensure that witnesses do not change their story after they have heard other witnesses. This is called the exclusion of witnesses.

Preliminary matters

At the beginning of the hearing, the presiding member of the panel will explain the issues the Board is there to decide and how the hearing will proceed. He or she will ask the parties if they have any preliminary matters to bring to the panel's attention. This is your chance to ask for clarification on a particular question, request an adjournment, etc.

What is a motion and how do I deal with it?

A motion is when you ask the Board to make a decision on a matter before, at the beginning or during the hearing. Motions may be made in writing or they may be stated at the hearing.

The Board often deals with motions on jurisdiction. This means that a party is arguing that the Board does not have legal authority to hear an application. In most cases, this type of motion is usually made in writing before the hearing. Parties are given the opportunity to comment on the motion.

If a party wants to make a motion at the hearing, the party will let the presiding member know that he or she has a motion to make. The party will explain the reasons for the request. The other party will be allowed to comment on the request and the party who made the motion will be given an opportunity to reply. The panel will then consider everything that was said and will make a decision. The presiding member will tell you if the motion is granted or rejected.

What are exhibits?

Exhibits are documents that the panel will accept in evidence and consider when making a decision about your application at a hearing.

How do I file an exhibit?

If you wish to make use of a document as evidence at a hearing, the document should be given to the Board and the other party 10 days before the hearing. Usually an exhibit is accepted into evidence when the person who prepared it (either you or your witness) testifies.

If you object to the filing of a document as an exhibit by the other party, you will have to tell the panel why you object or disagree. The other party may also object to a document that you wish to file as an exhibit. The panel will listen to the reasons for the objection and will decide if the document will be accepted as an exhibit or not.

If the panel has accepted a document as evidence, the presiding member will give it a number. You should write the number on your copy and refer to it when talking about that particular piece of evidence. This is important because the panel may be dealing with a number of exhibits and it will be easier for them if you refer them to the number of an exhibit.

Testimony and Questioning

You or the other party will be asked to call its first witness. The witness will be asked to promise that they will tell the truth.

If you do not have a lawyer, you are allowed to be your own witness in addition to any other witnesses you may have. Since you do not have a lawyer and will have no one to ask you questions, it is up to you to tell your story in the most direct and logical way. The witness' role is to provide facts and information about your situation. Board members may ask you questions to clarify your testimony.

When you are finished telling your side of the story, the other party will question you and they will do the same with each witness. This is called cross-examination.

If you have a witness other than yourself, you will be asked to question your witness. You cannot phrase your questions in such a way that you are “putting words in their mouth”. This is called a leading question and it is not allowed. A leading question usually happens when you lead the witness to answer either yes or no. It is important not to suggest an answer to your witness or to ask your witness to agree or disagree with a statement or document. Ask your witnesses questions like: “Tell us what happened at the meeting you went to at the CAS”.

You will also be allowed to ask questions of the other party’s witnesses. The panel may also have some questions for witnesses.

Sometimes new issues are raised during cross-examination. You will be allowed to ask questions about the new issues. This is called re-examination.

When re-examining your witness, you must remember to only ask questions that relate to the new issues raised in the cross-examination. It is not the time to ask the same questions over again or to introduce new evidence. If you attempt to do this, the other party will likely object or the Board will stop you.

How do I deal with objections?

A party may have a number of reasons for making an objection. An objection means that a party thinks that a question should not be asked. If you wish to object to something, you should let the presiding member know you have an objection. You should then state your objection and the reason why you are objecting. The presiding member will then seek the views of the other party. The panel will state its decision.

If someone objects to something you have said, the presiding member will seek your views and give the person who objected a chance to reply. The panel will then state its decision.

Do not raise your objection directly with the other party or talk to the other party about your objection. You must tell the presiding member that you object to something said or done by the other party.

Evidence versus Argument

When you do not have a lawyer, it may be tempting to “fill in the blanks” or to comment on a witness’ testimony as you question that person. You cannot testify in the place of your witness. If you do this, the other party will likely object to your “giving evidence” because it is not your turn to testify. You must ask more questions to get the testimony you require.

A common mistake for self-represented parties is to argue their case as they are testifying or when cross-examining the other party’s witnesses.

The following is an example of how evidence and argument can be mixed up:

- I had to make several phone calls to them but I finally received the decision two weeks later. (Evidence)
- The decision was received 10 days after the deadline stated in the legislation; it is out of time and cannot be relied upon (Argument).

Final argument

After all the witnesses have given their testimony, the Board will ask the parties to explain why the Board should decide in their favour by using the information that they have heard at the hearing. This is called the closing or final argument. It is not the time to testify all over again. It is the time to go over the most relevant evidence presented before the Board. You are not allowed to give any other evidence during the closing argument. It is best to prepare an outline of what you want to say during your closing argument. It is also your chance to present the arguments in favour of your case and point out the weaknesses in the other party's case.

In summary, you need to tell the Board what you would like them to remember as they leave the hearing room to make their decision.

Decision

The Board has specific timelines to issue or render its decision. The Board will send a written decision to both parties at the same time.

Conclusion

The key to success is preparation and understanding the process. In order to help you understand what the Board is looking for and the kind of evidence you need to prove your case, you may wish to read past Board decisions that deal with matters that are like your complaints or concerns. The Board's website, www.cfsrb.ca, provides a direct link to its decisions.

The Board hopes that you find this information helpful in preparing for your hearing.