



PRACTICE GUIDE FOR THE HEARING OF APPEALS



*Canada Appeals Office on
Occupational Health and Safety*

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PREAMBLE

Designated by the Minister of Labour and grouped under an administrative structure known as the **Canada Appeals Office on Occupational Health and Safety**, appeals officers in occupational health and safety act as an administrative tribunal. As such, when deciding appeals, those officers must abide by what are referred to as the rules of natural justice. These rules require that in exercising their authority under the law, appeals officers enable the parties to be heard and present their arguments and objections. Appeals officers must act in an impartial and independent manner and abstain from showing any actual bias or appearance of bias.

The powers and duties of appeals officers are set out in the enabling legislation, i.e. the *Canada Labour Code*, Part II. More particularly, when deciding appeals, they have the power to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence under oath and to produce documents and things deemed necessary. They can also receive any evidence and information that they see fit, whether or not admissible in a court of law, and examine documents or records and make inquiries that they regard as needed.

Furthermore, appeals officers are not required to hold a hearing in order to decide on the matter or issue brought to them. They are master of their own procedure when inquiring into an appeal, subject to their dual duty of giving the parties the opportunity to present their evidence and position and of considering the information provided when making their decision.

Generally, the hearing held by the appeals officer is of an adversarial nature, where the parties can in turn present material evidence and documents, question witnesses and submit arguments in support of their position. However, other types of hearings can be held depending on what the parties may want and, ultimately, on what the appeals officer may decide, as long as the appeals officer acts in accordance with his dual legal requirement to proceed in a summary way and without delay.

DEFINITIONS

“Appellant”
« Appelant »

“appellant” means any employer, employee or union appealing a direction issued by a health and safety officer and any employee appealing a decision of no danger issued by a health and safety officer following the employee’s exercise of his right to refuse to work.

“Respondent”
« Intimé »

“respondent” means any employer, employee or union wanting to oppose the appellant’s appeal of a health and safety officer’s decision or direction that is of direct concern to the employer, employee or union.

“Other party or Intervener”
« Autre partie ou Intervenant »

“other party or intervener” means any person or group given such status by the appeals officer after having demonstrated that they have substantially the same interest as the appellant or the respondent and could be affected by the appeals officer’s decision.

“Office”
« Bureau »

“Office” means the Canada Appeals Office on Occupational Health and Safety, i.e. an administrative structure established to support the appeals officers in the performance of their duties and to facilitate the hearings that they preside.

“Appeal”
« Appel »

“appeal” means the recourse taken against a decision of no danger issued by a health and safety officer following a refusal to work or against any direction issued by such an officer.

FILING AN APPEAL

Notice of appeal

An appeal is initiated by sending to an appeals officer, through the Office, a written notice to that effect signed by the appellant, generally with the related decision or direction issued by the health and safety officer.

Optional application form

An appeal can be initiated by duly filling and signing the notice form. It can also be made without using that form, as long as the appellant provides to the Office all the information required to contact him and be advised of the nature of the appeal. This information must include the appellant’s name and, if need be, the name of his representative, and their respective addresses, the employer’s name and address, the name of the union if there is one, and the name of the health and safety officer who issued the decision or direction under appeal.

Date
Grounds of appeal

The notice of appeal must also indicate the date when the appellant was informed of the health and safety officer’s direction or decision and a summary of the grounds of appeal.

Representative

Any party to an appeal may choose to act on his own behalf or through a duly authorized representative.

The appeals officer may require that the representative demonstrate his authorization to act in this capacity.

Notification to interested persons

On receiving an appeal, the appeals officer may, where possible, notify in the manner he sees fit any person whose rights, in his opinion, are directly affected by the appeal.

Time limits

The Canada Labour Code, Part II, sets the time limits to appeal.

The appellant who cannot initiate the proceeding within the time limit must inform an appeals officer of the reasons that would justify extending that time limit. The appeals officer will decide the matter after giving all parties the opportunity to present their position on the issue.

Date of receipt

The date of receipt of a notice of appeal or of any related documents for which a time limit for filing has been set is:

- a) for regular or registered mail, the postmark;*
- b) in any other case, the date of receipt by the Office.*

Filing and service of documents

The filing of a notice of appeal and the service of documents to any party, representative or interested person is made:

- a) in person;*
- b) by mail (preferably registered), to the address of service;*
or
- c) by fax (with proof of transmission).*

Address of service

For the purpose of filing or serving documents, the address of service means:

- a) in the case of an appeals officer, the address of the Office;*
- b) in the case of any other party or person, the address appearing on the notice of appeal or, if there is none, the last known address of the party or person.*

PARTY OR INTERVENER

Standing status

Any person or group wishing to take part in a proceeding as a party or intervener submits to the appeals officer, at any stage of the proceeding, a written request with motives.

Consulting parties

The appeals officer may ask the parties for their position on such a request before rendering a decision.

CREATING AN APPEAL FILE

To ensure prompt and uninterrupted inquiries, the Office ensures that the designated appeals officer and all parties have all the documents and information contained in the appeals file before the hearing.

Health and safety officer's file	On receiving notification of an appeal, the Office will ask the health and safety officer involved to provide without delay the complete file that he made in order to render the decision or issue the direction under appeal.
Forwarding to parties	The Office forwards the health and safety officer's file to the parties upon receipt.
Parties' documents	Before the hearing and at any stage of the proceeding, the party wishing to submit to the appeals officer additional documents or information that the party considers relevant to the determination of the appeal may forward to the Office a sufficient number of copies, so that the Office can transmit one to the appeals officer as well as to all parties.
Confidential documents	On his own initiative or upon request by a party, the appeals officer may decide that a document in his possession will be considered confidential in whole or in part. If so, access to the document will be restricted to persons designated by the appeals officer.

STAY OF DIRECTIONS

Under the Act, an appeal of a direction does not operate as a stay of the said direction.

Request for a stay	The employer, employee or union concerned by a direction under appeal may apply to an appeals officer for a stay of the said direction. This request is made in writing and states the appellant's reasons for seeking the stay.
Required evidence	The appeals officer may order a stay of the direction[s] after consulting the parties to the appeal and considering, among others, the following evidence: <ul style="list-style-type: none">• the appellant makes a <i>prima facie</i> case and satisfies the appeals officer that the question under examination is a serious one;• if the stay is not granted, there could result irreparable harm or prejudice;• the balance of inconvenience, i.e. which party would suffer more prejudice if the stay was granted or refused;• where needed, the protective measures put in place by the appellant before the decision on the stay application.

WITNESSES

Notification to attend	<p>Normally, witnesses are summoned to attend before the hearing starts.</p> <p>The parties may, on their own initiative, summon witnesses that they deem necessary in support of their case.</p>
Summons	<p>At any stage of the proceeding, a party may request any appeals officer to summon the attendance of any person that the party wishes to question.</p> <p>A summons serves as a notice to an individual to attend a hearing at the date, time and location specified therein to give testimony and, if need be, lists the documents and exhibits to be produced.</p>
Health and safety officer	<p>If the health and safety officer's testimony is required, the appeals officer ensures that the officer is provided with a copy of the hearing notice as well as a summons to attend to testify. (see health and safety officer's testimony)</p>
Service	<p>Service of a summons to attend and testify to the individual so notified is made in the manner selected by the requesting party and paid by that party.</p>

HEARING

Types of procedures	<p>If an appeals officer decides to hold a hearing, such hearing is generally held in the presence of the parties and/or their representatives.</p> <p>The appeals officer may decide to proceed in a different manner, including by written submissions, telephone or video conference, or in any other manner that enables the parties to present evidence and make submissions. The appeals officer chooses the procedure of his own initiative, after consulting the parties or following their request.</p>
Notice of hearing	<p>Once the file is completed, the appeals officer has a notice sent to the parties, to advise them of the date, time and location of the hearing.</p> <p>On so doing, the appeals officer endeavours to have this notice sent sufficiently early so that the hearing can proceed without delay.</p>

Pre-hearing conference	<p>If he deems it necessary, the appeals officer may hold a pre-hearing conference to deal with particular matters relative to the hearing and:</p> <ul style="list-style-type: none"> a) <i>decide on preliminary issues;</i> b) <i>clarify the issues at bar;</i> c) <i>advise on the procedure to be used, including whether the hearing will proceed in an expedited manner;</i> d) <i>decide whether the health and safety officer whose decision or direction is being appealed will be summoned to attend the hearing as a witness;</i> e) <i>establish the list of witnesses and expert witnesses of each party;</i> f) <i>determine the hearing dates as well as the length of the hearing;</i> g) <i>resolve any other matter that could assist in the production of evidence and enable the hearing to proceed without delay;</i> h) <i>ask the parties to write and forward an agreed statement of facts and issues.</i>
Opening statement	<p>At the outset of the hearing, the appeals officer may choose to make an opening statement. This will enable the appeals officer to introduce himself and deal with different issues, thus allowing the hearing to proceed without delay, more particularly:</p> <ul style="list-style-type: none"> • identify the parties; • describe the case and specific matters at bar; • explain the applicable onus of proof; • clarify the hearing procedure to be followed and the rules applicable to the submission of written material and oral evidence; • explain the decorum expected of all individuals taking part in or attending at the hearing.
Public hearing	<p>Hearings are generally open to the public. However, the appeals officer may decide otherwise of his own initiative or at the request of a party.</p>
Preliminary matters or objections	<p>Before proceeding on the merits of the case, the appeals officer allows parties to address preliminary matters or objections if needed.</p>
Parties' representations	<p>The appeals officer allows parties to make representations on these matters or objections before giving his ruling.</p>
Ruling	<p>The appeals officer may rule immediately on these matters or objections or reserve his decision.</p>
Preliminary statements of parties	<p>Once preliminary matters and objections have been dealt with, the appeals officer may allow each party to make an opening statement. This enables them to summarily explain how they intend to present their case, to briefly indicate what their evidence will be and to specify the conclusions they seek.</p>

Exclusion of witnesses	At the outset of the hearing and at any time thereafter, the appeals officer may, of his own initiative or at the request of a party, order the exclusion of any witness from the hearing until that individual is called to testify.
Exception	A witness cannot be excluded if, in so doing, the rules of fairness applicable to that witness would be violated. However, in such a case the appeals officer may order that the individual testify in priority.
Other individuals	The appeals officer may also order the exclusion from the hearing of any individual whose behaviour is disruptive.
Proceeding order	<p> The appellant is the first party to present his case. If there is more than one appellant, each appellant's case is heard first. This is followed by the respondent's case, after which the intervener presents his case. Lastly, the appellant can offer evidence in reply.</p> <p> Except if the appeals officer decides otherwise, the parties present their case as follows:</p> <ul style="list-style-type: none"> • examination-in-chief of witnesses by the party who summoned them and production of documents and exhibits; • cross-examination of the witnesses by the other party or parties; • re-examination of the witnesses by the initial party; • questions from the appeals officer.
Final argument	After their case submission, the parties present their final argument in the same order as the presentation of the case. The appellant or appellants may then reply to the arguments made by the other parties.

(See the appended diagram on the hearing procedure.)

DECISION

Once the parties have completed their final argument, the appeals officer may render his decision immediately or after deliberation.

Written decision with reasons	In all cases, the appeals officer provides the parties with a written decision, with reasons and, if need be, with the appropriate resulting direction, or confirms the decision, the reasons or the directions that were issued orally.
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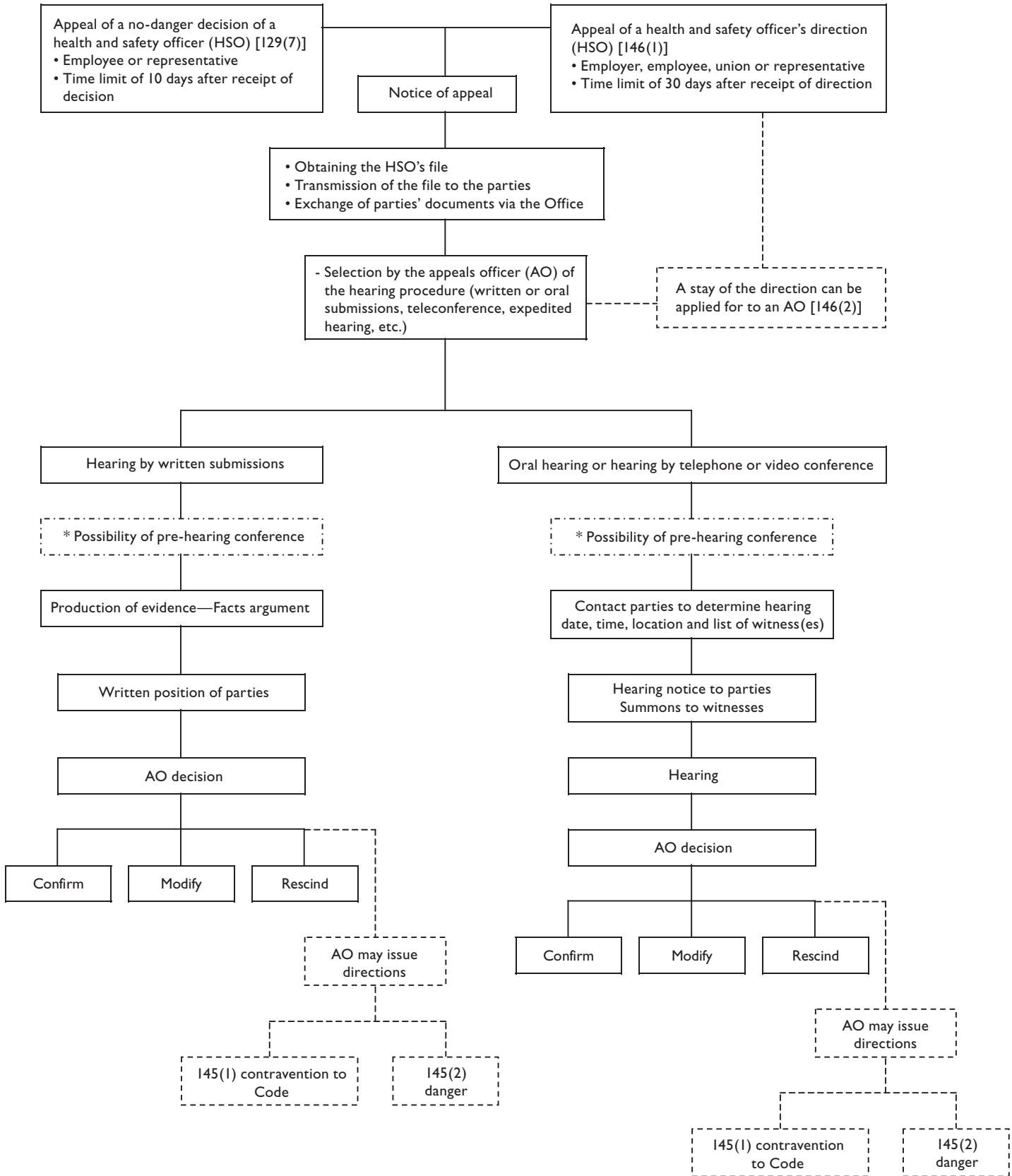
EXPEDITED HEARING

Duty	The Code requires that the appeals officer inquire in a summary way and without delay into the appeal brought to him.
Special cases	Special circumstances and conditions may sometimes add to the necessity of proceeding in a summary way and without delay. Those include the urgent nature of the matters, their impact on public service, an imminent danger, the irreparable consequences of a delay, the number of similar cases or other similar issues.
Agreement consultation	If the appeals officer considers that it is appropriate to proceed expeditiously, he may, of his own initiative, with the parties' agreement or at their request, choose to inquire into and decide on a matter in an expedited hearing.
Precedent conditions	Where the appeals officer has so decided, proceeding by way of an expedited hearing will be conditional upon the parties, within the time limits specified by the appeals officer: a) <i>providing in writing a common agreed statement of issue or issues and facts;</i> b) <i>agree in writing to accept the appeals officer's decision in the matter.</i>
Hearing procedure	Once these conditions are satisfied, the appeals officer proceeds by video or telephone conference, or by receiving written submissions, or by making his determination based on the parties' agreed statement of facts and circumstances, by test case, confirmed mediation or any other procedure that will allow the officer to make a decision without delay.
Written decision	The appeals officer will issue a written decision to confirm his conclusions or any agreement reached with his assistance.

HEALTH AND SAFETY OFFICER'S TESTIMONY

Rule	The health and safety officer called to testified is not a party to the appeal.
Role	The health and safety officer's role under the <i>Canada Labour Code</i> requires that he acts in an impartial and unbiased manner. Consequently, during the hearing of an appeal, the parties cannot summon the officer to attend and testify in support of their position.
Witness capacity	Where the appeals officer has deemed it useful to hear the testimony of the health and safety officer, it is as witness of the appeals officer that he testifies. Consequently, his examination in chief is made by the appeals officer and it may be followed by cross-examination by the parties.

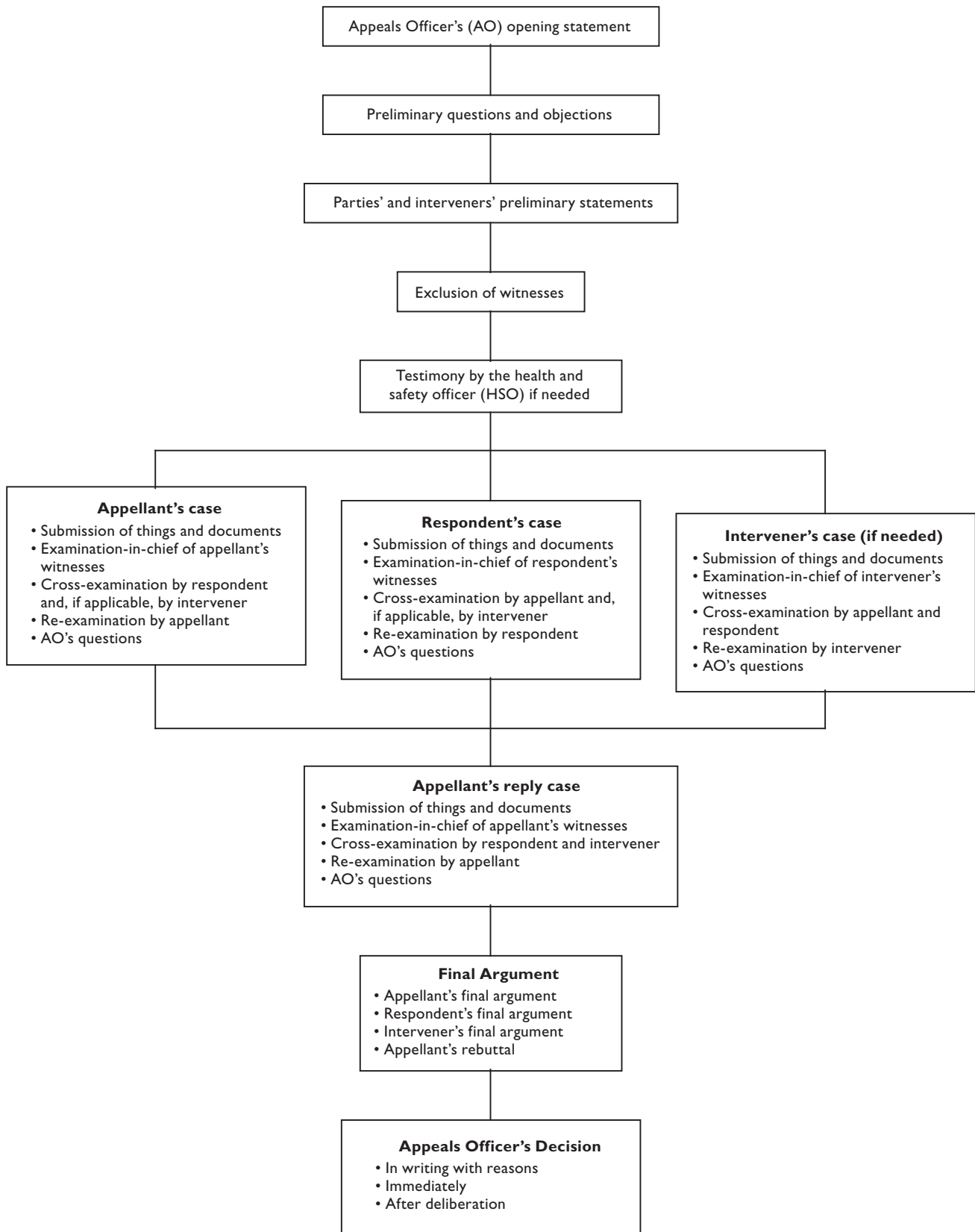
Appeal Process Under the *Canada Labour Code*, part II



* A telephone conference may be held at any time

Note: This diagram is only meant as a guide. The appeals officer is master of his own procedure and may choose to omit certain steps.

Hearing Procedure



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