



## Licence Appeal Tribunal

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Appealing your

## **COMMERCIAL VEHICLE/TRAILER IMPOUNDMENT AND SUSPENSION ORDER**

under section 50.3 of the *Highway Traffic Act*  
(Operation of commercial motor vehicle/trailer with a critical defect)

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or 1-800-255-2214

This brochure has been prepared by the Licence Appeal Tribunal to assist commercial motor vehicle or trailer owners who are considering an appeal to the Tribunal.

There are a number of types of appeal that may be heard by the Tribunal, and there is a Tribunal brochure available for each. You may obtain copies from the Tribunal's office at the address and phone number shown at the end of this brochure.

On April 1, 2000, the Licence Appeal Tribunal replaced the Licence Suspension Appeal Board. Any reference in a statute or regulation to the Licence Suspension Appeal Board is now a reference to the Licence Appeal Tribunal.

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Licence Appeal Tribunal

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## **Purpose of this Brochure**

This brochure deals with an appeal to the Licence Appeal Tribunal ("Tribunal") of an impoundment and suspension order of a commercial motor vehicle or a trailer by the Registrar of Motor Vehicles where the vehicle/trailer was believed to have one or more critical defects.

In this brochure the owner requesting a hearing before this Tribunal is referred to as the "Applicant" and the Registrar of Motor Vehicles is referred to as the "Ministry".

The Registrar of Motor Vehicles (the "Ministry") may order a commercial motor vehicle or a trailer to be impounded due to a critical defect. Depending on the Applicant's impoundment history, this may be for 15, 30 or 60 days. A detailed statement as to the definition of a "critical defect" is given in Regulation 512 of the *Highway Traffic Act*.

This brochure is informational only. The *Act* and its regulations are the official sources of information and should be read for definitive information.

## **The Licence Appeal Tribunal**

The Licence Appeal Tribunal is an independent quasi-judicial administrative tribunal. Tribunal Members are appointed by Order-in-Council signed by the Lieutenant Governor of Ontario.

An appeal before the Tribunal is a court-like process but less formal. The Tribunal hears an appeal and issues a written decision based on the evidence presented by the parties at the appeal.

## **What is the possible result of an appeal to the Tribunal?**

If there is an appeal, the Tribunal may confirm or set aside the Ministry's impoundment order. The decision of the Tribunal is final and binding. If the order is to set aside the impoundment, the Ministry must release the vehicle, reinstate the vehicle portion of the permit that was suspended and pay certain costs related to the impoundment, as described in subsection 50.3(8) of the *Highway Traffic Act*. For further information regarding the release of the vehicle please contact the Ministry.

If there is no appeal or if there is an appeal but the Tribunal confirms the Ministry's impoundment order, the vehicle remains impounded and will be released on the expiration of the impoundment period and after payment by the Applicant of the removal and impound costs payable under the *Act*.

If an appeal before this Tribunal is commenced, under the *Highway Traffic Act* an owner of an impounded vehicle may apply to the Ontario Superior Court of Justice for an Order directing the Registrar to release the vehicle and reinstate the vehicle portion of its permit.

The Registrar of Motor Vehicles must be notified in writing if such an application to the Court is made. The owner must deposit security in an amount determined by the Court for release of the vehicle.

### **Who can make an appeal?**

The owner of a vehicle that is impounded can appeal the impoundment order. An "owner" is defined under section 82.1(1) of the *Act* as:

"Owner" means the person whose name appears on the certificate of registration for the vehicle, and, where the certificate of registration for the vehicle consists of a vehicle portion and plate portion, means the person whose name appears on the vehicle portion, ("proprietaire")

### **Is there a cost to make an appeal?**

A \$100.00 fee payable to the Minister of Finance must accompany the Applicant's filing of a notice of appeal with the Tribunal. This payment should be by certified cheque or money order. This fee is non-refundable.

The Applicant is responsible for his or her own costs in presenting the Applicant's case. These might include legal fees, expert fees, witness fees, travel costs and so forth.

### **When must an Applicant make an appeal?**

The Applicant should file with the Tribunal a notice of appeal during the duration of the impoundment.

### **What must be done by an Applicant to start an appeal?**

To have an appeal hearing, the Applicant appealing an impoundment order must file certain material with the Tribunal within the required time period.

The Applicant should provide the required information asked for in the Notice of Appeal form (enclosed in this brochure). This completed form, the \$100 fee payable to the Minister of Finance, and two separate copies of all written material that the Applicant intends to use as evidence in support of the appeal should be filed as a package with the Tribunal within the required time period. Also, include in the package a copy of the Ministry's impoundment order, a copy of the Applicant's vehicle ownership permit, and proof that a copy of the notice of appeal has been sent to the Registrar of Motor Vehicles at the address set out in the impound order.

Written material that the Appellant intends to use as evidence might include:

- in the case of a stolen vehicle, a copy of the report filed with police indicating the occurrence;

- maintenance vehicle reports and mechanic's reports with details of repairs; and
- affidavits with exhibits attached to them (Affidavits are sworn statements and exhibits are usually other documents such as invoices or reports that verify or support the statements made in the affidavit).

When the Applicant's package of material is received, the Tribunal will schedule a hearing.

### **On what basis can an Applicant appeal the Ministry' impoundment order?**

The *Highway Traffic Act* permits an appeal of the Ministry's order on only two specific grounds. The Applicant should identify the ground of appeal in the Notice of Appeal form requesting a hearing before this Tribunal. Section 50.3 of the *Act* states:

50.3 (3) The only ground on which an owner may appeal under subsection (1) and the only grounds on which the Board may set aside the order to impound and suspend are:

- (a) that the commercial motor vehicle or trailer that is subject to the order was stolen at the time the order was made;
- (b) that the commercial motor vehicle or trailer had no critical defects at the time of the inspection under section 82.1

### **How do you find out about the hearing date?**

Once a Notice of Appeal is filed with the Tribunal with the \$100.00 fee and all the required supporting documentation, a hearing date will be set by the Tribunal, and the Tribunal sends a Notice of Hearing to the parties. The Notice of Hearing sets out the date, time and place of the hearing.

### **What happens at a hearing?**

An oral (in person) hearing is the usual type of hearing held. An oral (in person) hearing, requires the appearance of both parties in person or their designated representatives acting on their behalf.

The Tribunal member holding the hearing asks those attending to introduce themselves, explains how the hearing will proceed, and deals with any preliminary questions. For example, any concerns a party has respecting the other party's disclosure of documents, may be addressed by the Tribunal as a preliminary matter at the commencement of a hearing.

The Tribunal member will ask the parties to present their cases. Where the appeal ground is that the vehicle/trailer was stolen, the Applicant will be asked to present the Applicant's case first. The Applicant, or the Applicant's representative, should briefly outline why the Applicant believes the vehicle should be released from the impoundment, and then the

Applicant and/or any other witnesses will give evidence in support of the Applicant's position. Following this, the Ministry or the Ministry's representative will outline why the Ministry believes the impoundment should continue, and the Ministry and/or any other witnesses will give evidence in support of the Ministry's position. Where the appeal ground is that the vehicle/trailer had no critical defect, the Ministry will be asked to present the Ministry's case first.

Each witness is asked to take an oath or affirmation to tell the truth before giving his or her testimony. Each witness who gives evidence at the hearing, immediately after giving evidence, may be asked questions by the other party or that party's representative. After all the witnesses have given their evidence, both sides, or their representatives on their behalf, state their final arguments, and the hearing is concluded.

If there is consent of the Tribunal and written consent of the parties, the Tribunal may hold an electronic hearing (telephone conference) or a hearing in writing. An electronic hearing is conducted like an oral hearing but by telephone conference with all parties present by telephone (at a prearranged telephone number given to the Tribunal in advance). A written hearing requires both parties to file written documentation, evidence and arguments by set deadlines. Details of the procedures to be followed for these types of hearings are in the Tribunal's Rules of Practice which can be requested from the Tribunal.

### **When will the Tribunal give its decision?**

The Tribunal member who hears the appeal will give a decision in writing. The Tribunal will issue its written decision shortly following the hearing. The decision is sent to the Applicant and to the Ministry or their authorized representatives. All decisions are final and binding.

### **What else do you need to know about an appeal?**

**Rules of Practice** the Tribunal's Rules of Practice set out the Tribunal's hearing procedures, and a copy can be requested from the Tribunal. When the Tribunal sends a Notice of Hearing to the Applicant, a copy of the Rules of Practice will also be sent if not previously forwarded.

**Using a Lawyer or Agent** A party is not required to have a lawyer or agent represent them at a Tribunal hearing. This is an individual decision of each party. However, a party should make a decision about representation well before the scheduled hearing date. If a party is represented by a lawyer or agent, that representative's name, address, telephone number and fax number should be given to the Tribunal as soon as possible. The Ministry is usually represented by a lawyer or agent at the hearing. Often owner will wish to be represented by the commercial operator, which will require written authorization from the owner.

**Who can be at an oral (in person) hearing?** Each party, each party's representative (such as a lawyer or agent), and any witnesses attend. The hearing

is open to the public unless ordered otherwise by the Tribunal.

**Hearing dates** are set on a first-come first-serve basis. Once a hearing date is set, a Notice of Hearing will be sent by the Tribunal to the parties or their representatives.

**Place of hearing.** The Tribunal holds hearings in major centres in Ontario. The Tribunal will hold an oral (in person) hearing at its closest available location to the site where the motor vehicle or trailer was inspected or at such other location as agreed by the Tribunal and the parties.

**Recording of Testimony.** Testimony given at a hearing will be recorded when directed by the Tribunal. Any party wanting a recorded hearing should ask the Tribunal well before the scheduled hearing date. A party requesting a copy of a transcript of a hearing must pay the required cost. The cost is at the rate set for a transcript in the Ontario Superior Court of Justice.

**Withdrawing or cancelling an appeal.** If the Applicant and Ministry resolve the appeal before the hearing date, or if the Applicant decides to withdraw or cancel the appeal for any other reason, the Applicant must notify the Tribunal as soon as possible by phoning and writing the Tribunal.

**Requests for adjournments of hearings** (changing a hearing date) are rarely granted and only on very specific and exceptional grounds.

*If a party does not appear on the date set for the hearing, the hearing may go ahead without that party and a decision made without further notice to that party.*

**Preparing your case.** It is always wise to be well prepared. If a party is going to rely on a report as evidence, it is advisable to have the author of the report at the hearing to answer questions about the report. If the author of the report is not available to be questioned, the report may be given less weight by the Tribunal when deciding the appeal.

**Use of a Subpoena.** If a party wants a witness to attend a hearing but that witness will not come unless he or she is subpoenaed to attend, a party can request a subpoena from the Tribunal. A subpoena is also called a ?Summons to Attend?. The Tribunal can provide a subpoena form to a party after the party has given the Tribunal information, such as, the witness's name and address. The Tribunal signs the completed subpoena form and gives it to the party, and it is that party's responsibility to have the witness served with the subpoena and to pay the witness attendance fee and conduct money set by Court tariff.

**Filing documents for use at the hearing.**



The Tribunal can refer to a party's documents only if the party has filed those documents with the Tribunal. Unless those documents are before the Tribunal at the hearing, the Tribunal will not consider them in making its decision.

Also, each party must disclose to the other any document that the party intends to rely on or refer to as their evidence at the hearing. This means that a party who files a document with the Tribunal must at the same time give a copy of that document to the other party.

All documents which a party intends to rely on or refer to as their evidence at the hearing should be fully disclosed to the other party before the hearing starts. The Tribunal's Rules of Practice sets out minimum disclosure time. This allows both parties an opportunity to review these documents before the hearing begins.

Written material that is not submitted to the Tribunal and the other party in compliance with the Tribunal's disclosure rules may be used at a hearing only with the Tribunal's permission, considering what is fair and reasonable.

#### REMINDER:

An Applicant who wishes to appeal the impoundment order to the Tribunal, should file the following material with the Tribunal:

- ' Filing fee of \$100 payable to the Minister of Finance by certified cheque or money order;
- ' Notice of Appeal form, its information complete and including the appeal ground(s);
- ' Two copies of all written material the Applicant intends to use as evidence supporting the appeal;
- ' Copy of the Ministry's order impounding the vehicle;
- ' Copy of the Applicant's vehicle ownership permit; and
- ' Proof that a copy of the notice of appeal has been sent to the Registrar of Motor Vehicles.

This material should be filed with the Tribunal during the period of impoundment.

To help schedule your appeal as soon as possible, please provide a telephone number where you can be reached during the day and your current full address. If you have a fax number where you can receive documents from the Tribunal, please advise.

If you have a lawyer or agent who is acting on your behalf, please provide the name, address, telephone and fax numbers.

You may make inquiries respecting your appeal to:

Licence Appeal Tribunal  
Suite 1200  
1 St. Clair Avenue West  
Toronto, Ontario  
M4V 1K6

Telephone: (416) 314-4260 or 1-800-255-2214  
Fax Number: (416) 314-4270 or (416) 314-6307  
or 1-800-720-5292

Attention: Hearing Co-ordinator

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