



## Licence Appeal Tribunal

---

Appealing your

## **MOTOR VEHICLE IMPOUNDMENT ORDER**

under section 50.2 of the *Highway Traffic Act*  
(driver driving when licence under suspension)

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

Telephone No. (416) 314-4260  
or 1-800-255-2214

This brochure has been prepared by the Licence Appeal Tribunal to assist vehicle 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.

Chair

Licence Appeal Tribunal

## Table of Contents

|   |    |
|---|----|
| Purpose of this Brochure  | 1  |
| Licence Appeal Tribunal   | 1  |
| What is the possible result of an appeal to the Tribunal?               | 2  |
| Who can make an appeal?   | 2  |
| Is there a cost to make an appeal?                                      | 3  |
| When must an Applicant make an appeal?                                  | 3  |
| What must be done by an Applicant to start an appeal?                   | 4  |
| On what basis can an Applicant appeal the Ministry's impoundment order? | 4  |
| How do you find out about the hearing date?                             | 6  |
| What happens at a hearing?  | 6  |
| When will the Tribunal give its decision?                               | 8  |
| What else do you need to know about an appeal?                          | 8  |
| Filing documents for use at the hearing                                 | 10 |
| Reminder  | 11 |
| Forms:  |    |
| Notice of Appeal  |    |

## **Purpose of this Brochure**

This brochure deals with an appeal to the Licence Appeal Tribunal (“Tribunal”) of a vehicle impoundment order made by the Registrar of Motor Vehicles because the owner’s vehicle was found to be operated by a driver whose licence was then believed to be under suspension.

In this brochure the individual 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 motor vehicle to be impounded - depending on the owner’s impoundment history - for 45, 90 or 180 days. This brochure outlines the vehicle owner’s right of appeal to this Tribunal under section 50.2 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. The decision of the Tribunal will be either to confirm or to set aside the Ministry’s order impounding the vehicle.

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

If there is an appeal and the Tribunal sets aside the Ministry’s impoundment order, the Ministry must release the vehicle, pay certain costs related to the impoundment, as described in subsection 50.2(7) (a), (b), and (c) 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 owner of the removal and impound costs payable under the Act.

The *Highway Traffic Act* does not provide for interim release of a vehicle under this type of impoundment order.

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

Only the owner of a vehicle that is impounded can appeal the impoundment order. An “owner” is defined under section 50.2(11) 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, (“propriétaire”)

If a person (such as a lessee of a vehicle) brings an appeal to the Tribunal, the owner must give that person written authority to do so on behalf of the owner.

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

A \$100.00 fee payable to the Minister of Finance must accompany the owner’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 owner is responsible for his or her own costs in presenting the owner’s case. These might include legal fees, expert fees, witness fees, travel costs and so forth.

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

The owner must file with the Tribunal a notice of appeal within 15 days of the Ministry issuing the order to impound the vehicle.

Where an owner has not commenced an appeal within the prescribed 15 days, the owner may request an extension of time from the Tribunal or from the Ministry. The Tribunal may grant an extension if the owner establishes that the owner, acting in good faith, was unable through accident, illness, or other cause beyond the owner’s control to bring the appeal within the prescribed 15 days.

The *Licence Appeal Tribunal Act* states at section 7:

Extension of time

7. Despite any limitation of time fixed by or under any Act for the giving of any notice requiring a hearing by the Tribunal or an appeal from a decision or order of the Tribunal under section 11 or any other Act, if the Tribunal is satisfied that there are reasonable grounds for applying for the extension and for granting relief, it may,
  - (a) extend the time for giving the notice either before or after the expiration of the limitation of time so limited; and
  - (b) give the directions that it considers proper as a result of extending the time.

Also, an appeal may be commenced after the expiry of the prescribed 15 day period if the Ministry gives his or her consent in writing to the owner and to the Tribunal. There is no right to an extension of time. The facts of each particular case determine whether or not an extension is appropriate.

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

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

The owner 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 owner intends to use as evidence in support of the appeal should be filed as a package with the Tribunal within the required time period. It is also helpful to include in the package a copy of the Ministry's impoundment order and a copy of the owner's vehicle ownership permit.

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

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

The *Highway Traffic Act* permits an appeal of the Ministry's order on only four specific grounds. One or more of these grounds must be identified in the Notice of Appeal form requesting a hearing before this Tribunal. Section 50.2 of the Act states that the only grounds on which an owner may appeal and the only grounds on which the Tribunal may set aside the order to impound are,

- (1) that the motor vehicle that is subject to the order was stolen at the time in respect of which the order was made;
- (2) that the driver's licence of the driver of the motor vehicle at the time in respect of which the order was made was not then under suspension;
- (3) that the owner of the motor vehicle exercised due diligence in attempting to determine that the driver's licence of the driver of the motor vehicle at the time in respect of which the order was made was not then under suspension; or
- (4) that the order will result in exceptional hardship.

Also, there are limits as to what can be considered by the Tribunal as "exceptional hardship". Section 22 of Regulation 574, R.R.O. 1990, as amended by Ontario Regulation 632/98 states:

22. (1) In determining whether exceptional hardship will result from an order to impound under section 55.1 of the Act, the Board shall consider whether no alternative to the impounded motor vehicle is available and, if no alternative is available, whether the impoundment will result in,
  - (a) a threat to the health or safety of any person ordinarily transported by the motor vehicle;  
or
  - (b) a threat to the public health and safety or to the environment or property of a community in whose service the motor vehicle is ordinarily used.
- (2) In determining whether exceptional hardship will result from an order to impound under section 55.1 of the Act, the Board shall not, subject to subsection (3), consider whether the impoundment will result in,

- (a) inconvenience to any person;
  - (b) financial or economic loss to any person;
  - (c) loss of employment or employment opportunity to any person; or
  - (d) loss of education or training or of an educational or training opportunity to any person.
- (3) The Board may consider the criteria set out in clauses (2) (b), (c) and (d) if the owner demonstrates that,
- (a) no alternative to the impounded motor vehicle is available;
  - (b) the loss will be immediate, significant and lasting;
  - (c) the impact of the loss will be upon a person ordinarily transported by the motor vehicle; and
  - (d) the impact of the loss,
    - (i) will be upon a person other than the person whose driving while his or her driver's licence was under suspension resulted in the order to impound the motor vehicle, and
    - (ii) will not be a result of a loss by the suspended driver of the type set out in clause (2)(b), (c) or (d).
- (4) In order to show that no alternative to the impounded motor vehicle is available under subsection (1) or clause (3) (a), the owner must demonstrate that every reasonable option has been considered and inquired into that could eliminate or adequately mitigate any threat or loss to the person, including using another vehicle to replace the impounded motor vehicle and making arrangements to do without the impounded motor vehicle or a replacement during the impound period.

Further, under the Act, an owner of a motor vehicle can only appeal once on the ground of exceptional hardship.

### **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. The vehicle owner will be asked to present his or her case first. The owner, or the owner's representative, should briefly outline why the owner believes the vehicle should be released from the impoundment, and then the owner and/or any other witnesses will give evidence in support of the owner'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.

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 owner and to the Register 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.

**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 was detained 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 owner and Ministry resolve the appeal before the hearing date, or if the owner decides to withdraw or cancel his or her appeal for any other reason, the owner 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.

It is a requirement of the regulations under the Act that a vehicle owner must file with the Tribunal two separate copies of any supporting documents at the time that the owner files a notice of appeal with the Tribunal. The Tribunal will send one of these copies to the Ministry.

Prior to the hearing, the owner may wish to file additional documents with the Tribunal (also giving a copy to the Ministry). The owner must do this within any filing dates stipulated by the Tribunal.

The Ministry also must file with the Tribunal any documents that the Ministry intends to refer to at the hearing (and give a copy to the owner or the owner's representative). The Ministry must do this within any filing dates stipulated by the Tribunal.

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

#### REMINDER:

An owner 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);
- ' Owner's Position in Appeal form, summarizing the owner's position;
- ' Two copies of all written material the owner intends to use as evidence supporting the appeal;
- ' Copy of the Ministry's order impounding the vehicle; and
- ' Copy of the owner's vehicle ownership permit.

This material should be filed with the Tribunal within 15 days of the Ministry issuing the order to impound the vehicle.

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

ISBN 0-7794-0394-0

November 2000

© Queen's Printer for Ontario, 2000

