



## Glossary

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### A

#### **Abate, abatement**

To reduce or decrease something. (*The tribunal ordered an abatement of rent.*)

#### **Accountability**

Taking responsibility for actions and decisions. A tribunal that is accountable lets the public and anyone involved in a dispute see how and why its decisions are being made, who is making those decisions and based on what reasons

#### **Act**

A law made by Parliament or a provincial legislature. (*The Divorce Act of Canada is the law that explains how to get a divorce.*) *See also* Law; Regulation; Statute

#### **Actual bias**

A connection between a decision maker and the issue to be decided. For example, a decision maker with their own financial interest in the issue to be decided has an actual bias. *See also* Bias; Perceived bias

#### **Adjourn, adjournment**

A delay in the hearing. Any party in the case can ask for an adjournment, but only the decision maker can grant one. An adjournment can be for a certain amount of time (temporary) or forever (final). (*The hearing is taking longer than expected, so it is adjourned to next week.*) *See also* Hearing; Preliminary motion; Recess



### **Adjudicate, adjudication**

When a decision maker resolves a dispute after considering the law and the evidence and arguments of the parties. (*The adjudication was delayed so a mediator could try to settle the dispute.*) See also Adjudicator; Alternative dispute resolution; Decision; Decision maker

### **Adjudicative function**

The power to make a decision using adjudication. (Administrative tribunals do an adjudicative function when they resolve disputes between parties.) See also Adjudication; Adjudicator

### **Adjudicator**

The official person who resolves disputes between parties. (*Members of administrative tribunals are adjudicators.*) See also Adjudication; Decision maker

### **Administrative independence**

How tribunals manage their day-to-day work is defined by law or decided by the people running them. This is not subject to interference from outside agencies such as government but may be reviewed by a court.

### **Administrative tribunal**

A decision-making organization created by legislation that defines its powers and procedures. An administrative tribunal can find facts, make recommendations, decide disputes, and set policy, depending on its enabling statute. (*The administrative tribunal responsible for residential tenancies handles problems between landlords and tenants.*) See also Act; Dispute

### **Admissible evidence**

The information a tribunal can consider when making a decision about a case. Evidence is admissible if it is both relevant and reliable. (*Louis is unhappy about the government's decision and asks a tribunal to reconsider it. The government's letter to Louis is admissible evidence because it shows that the government refused to give him employment benefits.*) See also Evidence; Rules of evidence



### **Adversarial hearing style**

A hearing style similar to a court trial – two or more parties with differing views of the case and outcome. One or more decision makers who listen but do not try to help one party more than the other to present the case.

### **Advocate**

A person who represents a party at a hearing. This person is not necessarily a lawyer. A skilled advocate has special knowledge of a particular area. For example, a party with a worker’s compensation claim might hire a “worker’s advocate” to help them with issues in workers’ compensation system. *See also* Agent; Counsel; Represent; Representative

### **Affidavit**

A written declaration or statement of facts, made by a person voluntarily under oath to a lawyer, a commissioner of oaths, or a notary public, to be used as evidence. (*Philip swore an affidavit before his lawyer Miriam.*) *See also* Affirm; Evidence; Oath; Perjury

### **Affidavit of service**

Affidavit intended to certify the service of a legal document to the person named on the documents.

### **Affirm, affirmation**

1. To promise to tell the truth when testifying as a witness or making an affidavit. (*Joe answered and affirmed he would tell the truth.*) *See also* Affidavit; Oath; Testify; Testimony
2. When a decision is approved by an appeal court. (*The Superior Court affirmed the decision of the Board of Review.*) *See also* Appeal

### **Agent**

A person who represents another person and can act in their place. (*An agent who is not a lawyer can represent a party at a tribunal hearing, but a lawyer representing a party is called a counsel.*) *See also* Advocate; Counsel; Represent; Representative



### **Agree, agreement**

1. Promises made by two or more people to each other to do something or to not do something. *(A lease is an agreement in which the landlord promises to rent to the tenant and the tenant promises to pay rent.)*
2. The document containing promises made by two or more people to each other to do something or to not do something. *(Sylvie gives the agreement she signed with her employer to the tribunal.)* See also Contract; Settlement

### **Allege, allegation**

A written or spoken statement about a fact. *(Sara claims that her roof leaks when it rains so she showed photos of the leaky roof to prove her allegation.)* See also Evidence; Fact

### **Alternative dispute resolution**

Different ways other than adjudication used to resolve disputes, including negotiation, conciliation, mediation, and arbitration. *(The parties were given a brochure on alternative dispute resolution.)* See also Dispute; Settlement

### **Ambiguity**

Vagueness, haziness, uncertainty, or doubt. An ambiguity exists when there is more than one reasonable way to interpret the legislation.

### **Amend, amendment**

Changing a legal document such as an application, pleading, contract, or a law. *(The parties agreed to an amendment to the lease to increase the rent.)* See also Agreement; Contract; Law

### **Appeal**

1. When a court checks a tribunal's decision to make sure it was correct. *(When an appeal is possible, it can be "as of right" [a party does not need permission to appeal] or "with leave" [a party must obtain permission to appeal].)*
2. A party who disagrees with a tribunal's decision may appeal the decision to a higher court. *(Decisions made by some tribunals cannot be appealed.)* See also Appellant; Court; Judicial Review; Privative Clause; Respondent



### **Appellant**

A person who appeals a decision. (*Emily appealed the tribunal's decision because she disagrees with it. Emily is the appellant.*) See also Appeal; Party; Respondent

### **Applicant**

The person who starts the case or wants the decision. (*Carla made an application to a tribunal for an order that a witness attend a hearing. Carla is the applicant.*) See also Apply; Application; Party; Respondent

### **Apply, application**

1. A party's request made to a tribunal, asking the tribunal to order something. (*Carla will apply to the tribunal to order a witness to attend a hearing.*)
2. The document containing a party's request to a tribunal. (*An application contains the reasons for the request.*) See also Applicant; Complaint; Claim; Motion; Respondent

### **Arbitrate, arbitration**

A way to resolve disputes not using a court. One type of administrative tribunal hearing. Comes up in legislation like the *Trade Union Act* and a collective agreement or contract. (*In arbitration, a person called an arbitrator considers the law and the evidence and arguments of the parties and makes a decision to resolve the dispute.*) See also Alternative dispute resolution; Arbitrator

### **Arbitrator**

A neutral and fair person who ends disputes using arbitration. (*The arbitrator had the witness sworn in.*) See also Adjudicator; Arbitration; Neutral

### **Argument**

A presentation on any subject to promote a party's interests and try to persuade decision makers to decide in their favour. An argument is not evidence. (*During the hearing, the parties made arguments to persuade the tribunal that each was right and the other was wrong.*) See also Closing argument; Hearing



### **Arrears**

Something that has not been paid, but needs to be paid. (*Maria's rent is in arrears because she missed her rent payment last month.*)

### **Authority documents**

Documents that guide or direct decision makers, such as an act, regulations, bylaws or a contract, or policy. These documents also allow decision makers to create other authority documents. (*The arbitrators heard the grievance, as they were directed to do under the minister's new authority document.*)

### **Award**

Decision made by a tribunal or an arbitrator to end a dispute between parties. (*The applicant was not happy with the award, but neither was the respondent.*) See also Decision; Order

## **B**

### **Bad faith**

Bad faith can mean many things: acting dishonestly, tricking a person, deliberately not doing what should be done, committing fraud, deliberately discriminating against a person, abusing power given by the government or the law, being unfair or unreasonable. (*The false reason the employer gave for the lay-off was evidence of the employer's bad faith.*) See also Good faith

### **Balance of probabilities**

The standard of proof used in most matters of administrative and civil law. Decision makers must be satisfied that the evidence shows a fact to be proven is more likely than not. Also known as "preponderance of the evidence."

### **Benefit**

Some payment given to a person by government or an employer. (*Jane's welfare benefit cheque was late and her mother's employment insurance benefit cheque was lost in the mail.*)



## **Bias**

The opposite of impartiality. Bias exists when a reasonably informed observer would perceive that a decision maker is not neutral about the issue to be decided. Bias may exist when decision makers have a personal interest in an issue or a firm opinion about an issue they have to decide on. *See also* Actual bias; Perceived bias

## **Burden of proof**

The obligation to bring evidence to prove to decision makers that the events in question happened as described. Also known as “the one who alleges must prove.” *See also* Legal burden of proof

## **C**

### **Case file**

A box, envelope, folder, or digital file that holds all the information and documents for each case brought to the tribunal. Often simply called the “file.”

### **Causal connection**

When one thing makes another thing happen. *(There was a causal connection between Marco leaving the tap running and the bathroom floor flooding.)*

### **Certified true copy**

Document guaranteed to be an exact copy of an original document. *(Mathew received a certified true copy of a tribunal's decision.)*

### **Chairperson, chair**

1. Person in charge of a tribunal. *(The tribunal's chairperson is chosen by the provincial government.)*
2. Person on a panel of a tribunal who controls the hearing for the panel and may have the final say in a decision. *(The panel chair ruled the evidence was not admissible.) See also* Administrative tribunal



### **Character evidence**

Summary of the witness' past actions, good or bad, or reputation in the community. Care should be taken to ensure that a party is not unfairly prejudiced by character evidence.

### **Chronological order**

In order of time, from what happened first to what happened last. (*Antoine is making an affidavit to describe the car accident so he writes down what happened in chronological order.*)

### **Circumstantial evidence**

Evidence not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved. The existence of the facts is only inferred from circumstances.

### **Claim, statement of claim**

1. To make a demand to a tribunal and the reasons for the demand. (*Mark claims \$2000 from Tina for firing him illegally.*)
2. Document containing a party's demand and the reasons for the demand. (*Mark filed a claim against Tina for \$2000 because she fired him illegally.*) See also Claimant; Remedy

### **Claimant**

Party who makes a claim. (*Mark is the claimant in the claim against Tina, who becomes the respondent.*) See also Claim; Party; Respondent

### **Closed hearing**

A hearing that is closed to the public and open only to the parties, their lawyers, agents, and witnesses, and the decision makers and staff of a tribunal. Part or all of a hearing may be closed. The information related to a closed hearing may be confidential. A closed hearing can also be called an *in camera* hearing. (*A journalist cannot attend a closed hearing.*) See also Confidential; Hearing; Public hearing





### **Closing argument**

Argument made by a party to a decision maker at a hearing after the parties have presented their evidence. In its closing argument, a party argues how the law and the evidence show that it is right and the other party is wrong. The party also states the decision it would like the tribunal to make. *(In written hearings, closing arguments are written down and given to the decision maker.) See also* Argument; Submission

### **Code of conduct**

An organization's written statement about how it expects its members to act, ethically and professionally. It reflects the key values of the agency and the public it serves. These values often include honesty, fairness, and respect. It sets the tone and direction for ethical behaviour and supports the best interests of the agency and the public it serves. Members of the organization must follow the organization's code of conduct. *(The code of conduct of the tribunal requires its decision makers to withdraw from a case if they have a conflict of interest.) See also* Conflict of interest; Impartial; Neutral

### **Collective agreement**

Contract between an employer and a trade union (a group of employees who join together to negotiate their working conditions). *(A collective agreement is the result of negotiation between the employer and the trade union about wages and other working conditions.) See also* Agreement; Contract

### **Coming into force provision**

The section dealing with how and when an act or provisions of an act takes effect.

### **Commission**

Organization created by the government to control or regulate certain types of public activities; sometimes a tribunal is called a commission. An administrative tribunal is often linked to a commission. A commission may have some decision-making authority. *(The Canadian Human Rights Commission protects civil rights and liberties.) See also* Administrative tribunal; Regulate



### **Commissioner**

Decision maker who works at a commission. (*The commissioner adjourned the hearing.*) See also Commission; Decision maker

### **Compellability**

Ability to force a person to testify. Some tribunals have the power to enforce the attendance of any person whose testimony it believes is necessary to the proceedings.

### **Compensation**

1. Something given to a person to make up for harm they suffered or for something they lost. (*Serena broke Gabriel's window. Gabriel asked Serena for compensation in the amount of money it cost him to fix the window.*)
2. Money paid to a person for working. (*Janet's compensation was increased so her annual salary is now \$40,000.*) See also Damages; Remedy

### **Competency**

Mental capacity of a person to testify or whether there is some rule of law prohibiting the person from testifying.

### **Complainant**

Party who makes a complaint. (*Annie is the complainant in a case against her employer, who is the respondent.*) See also Claimant; Complaint; Party; Respondent

### **Complaint**

1. Request made by a party to a tribunal to order something. (*Annie filed a complaint of discrimination against Adam, asking for \$5000 in compensation.*)
2. Document containing a request made by a party to a tribunal that explains the reasons for the request. (*Annie's complaint explains that Adam discriminated against her because she is a woman.*) See also Application; Claim; Complainant; Motion



### **Conciliation**

A way to resolve disputes using a conciliator. *(An employer and a trade union may use conciliation to reach a collective agreement.) See also* Alternative dispute resolution; Conciliator; Mediation

### **Conciliator**

A neutral and fair person who helps parties resolve their dispute through conciliation. *(The conciliator met with each party separately first.) See also* Conciliation; Negotiation; Neutral

### **Concurring reasons**

A separate opinion delivered by one or more decision makers that agrees with the decision of the majority of a panel (or court) but offers their own reasons for reaching that decision.

### **Confidential**

Private or secret information. *(Lisa tells her lawyer Martha about some problems with her landlord that she wants kept confidential.) See also* Closed hearing

### **Conflict of interest**

When a person has a personal connection to the dispute or the people involved in the dispute and may not be able to make a neutral and fair decision. *(Angela's neighbour is the adjudicator for her case so he may have a conflict of interest and should withdraw from the case.) See also* Code of conduct; Impartial; Neutral

### **Connector words**

Words that help interpreters to know whether some or all elements in a section must be met. Examples: “and,” “or,” and “either”

### **Consent**

Give permission or agree. *(Karim consents to try mediation to resolve his dispute with a classmate.) See also* Alternative dispute resolution; Mediation



### **Consequential amendments**

Amendments to one act that also apply to other acts affected by that amendment. For example, a Highway Traffic Amending Act may amend section 15 of the Highway Traffic Act. The Highway Traffic Amending Act will also amend other acts that are affected by the amendment of section 15 of the Highway Traffic Act.

### **Contempt of court**

Acts calculated to obstruct or hinder a court or tribunal in the administration of justice. Committed by a person, being under the court's authority as a party to a proceeding, who willfully disobeys or ignores a lawful order or fails to comply with an undertaking which he or she has given.

### **Contest**

To be against something; to dispute something. (*Peter has decided to contest a tribunal's decision by appealing it.*) See also Appeal; Dispute; Response

### **Context**

Everything an interpreter may use to determine the meaning of words used in legislation. This includes:

- the words and phrases used in the section or sections where those words appear in that piece of legislation.
- the remainder of that piece of legislation
- other legislation enacted by that legislature
- other sources including legal values, presumptions, interpretation assumptions, drafting conventions, legislative history, Hansard, commission reports, and legislative debates.

### **Contract**

1. Promises made by two or more people to each other to do something or not do something.
2. A document containing promises made by two or more people to each other to do something or not do something. (*Monica signed an employment contract with Irene for her to work as Monica's assistant.*) See also Agreement; Settlement



## Costs

1. Money spent by a person to have a case heard by a tribunal, including fees paid to the tribunal and some money paid to a witness and a lawyer. (*Jane, the applicant, was ordered to pay costs to Raj because Jane had acted in bad faith.*)
2. Money that a tribunal spent to handle a case. (*The tribunal ordered Jane to pay the tribunal's costs because her bad faith had delayed the hearing.*)
3. In a civil proceeding, costs represent a pecuniary allowance made to the successful party, recoverable from the losing party, for expenses in prosecuting or defending an action. Few tribunals have the statutory power to award costs. *See also* Bad faith

## Counsel

1. To give advice to someone. (*Hal was able to counsel Michael not to lose his temper.*)
2. A person giving advice, especially a lawyer representing a party before a tribunal. (*Counsel for the respondent asked for a short adjournment.*) *See also* Agent; Represent; Representative

## Cross-examination

Asking questions to test the evidence, find out the believability of that evidence, and bring out the evidence to support the party's position. Done by a party whose interest in the case is opposite to the party that called the witness to give evidence. (*Bob called Maya as a witness, and so Guy asked Maya questions in cross-examination.*) *See also* Examination; Hearing; Re-examination; Witness

## Court

Organization that handles disputes between people according to the law. A decision made by a tribunal may be appealed to a court or reviewed by a court. (*The appeal of the decision of the Rent Commission had to be taken to the Superior Court.*) *See also* Adjudication; Appeal; Decision maker; Judicial review; Law

## Credibility

Concerns the veracity of a witness's testimony. This is the witness's willingness to speak the truth as the witness believes it to be. Credible testimony may not be reliable. *See also* Reliability.



## **D**

### **Damages**

Money given to a person to make up for a loss or for harm done to them. (Irina broke Robert's computer so she has to pay him \$1500 in damages to compensate him.) See also Compensation; Remedy

### **Decision**

An answer or result. Decision makers consider evidence, compare it to the legislation, and arrive at a conclusion to the questions they must decide. Decisions are made on topics such as jurisdiction, procedure, interpretation, evidence, and merits. A decision can be final or interim. A decision may include a ruling, judgment, opinion, recommendation, award, direction, order, or summary. (*After the hearing, the tribunal's decision was that Robin must pay damages to Megan.*) See also Adjudication; Award; Oral decision; Written decision

### **Decision maker**

A person who is authorized to and follows the legislation to make decisions on administrative questions. In this course, decision makers include appointed tribunal members, hired or contracted decision makers, departmental decision makers, delegated decision makers, and investigators. Other people who can end disputes between people include judges at courts and arbitrators. (*As the decision maker, the Appeal Panel Chairperson cannot always please the people on both sides of the dispute.*) See also Adjudicator; Chair; Chairperson; Decision; Member

### **Decision-making responsibility**

A dispute is decided by the person who heard the evidence and the submissions from everyone involved, and that person takes final responsibility for their decision.

**Declaration** See Determination



## **Deduction**

Money that is taken away or held back for something. *(The employer made deductions from Sal's paycheques for union dues and taxes.)*

## **Default**

1. Not doing something that had to be done under the law or a contract. *(Naomi missed a few mortgage payments, so she is now in default with the bank.)*

2. Missing a hearing at a tribunal or not providing documents that are needed. *(Sophie did not go to the hearing of her case, so the tribunal made a default order against her.)* See also Agreement; Contract; Law; Obligation

**Defence** See Response

**Defendant** See Respondent

## **Determination**

A finding in a matter that does not settle all the issues. For example, a tribunal may make determinations with respect to the rights, privileges, or duties of parties.

## **Diligence**

1. Showing the necessary care and attention. *(Doing something with diligence means doing it carefully.)*

2. Doing something quickly and efficiently. *(The lawyer sent the notice with diligence.)*

## **Direct evidence**

An account of events that a witness has seen, heard, or experienced firsthand. This is to be contrasted with hearsay evidence.

## **Disclose, disclosure**

The process of revealing information. Tribunals and courts often expect or require the parties in a case to fully disclose information to each other before the hearing begins. Any participant in a



proceeding may request disclosure from the other participants of any documents or information relevant to the proceeding. (*Zara must disclose an affidavit made by a witness to the other parties.*) See also Affidavit; Confidential; Exhibit

### **Disclosure of evidence**

When parties show or give copies of their evidence to each other before a hearing. (*The tribunal rules require disclosure by the parties of their written evidence to each other.*) See also Disclosure; Evidence; Hearing; Preliminary motion

### **Discontinue**

Giving up something; putting an end to something. (*Pascal and Lina settled their dispute so they want to discontinue the case.*) See also Settlement

### **Discretion**

“Refers to decisions where the law does not dictate a specific outcome, or where the decision maker is given a choice of options within a statutorily imposed set of boundaries.”<sup>1</sup> Discretion gives decision makers the freedom, by law, to decide how to manage a complaint or resolve a dispute. (*The Appeal Court said the question was decided in the arbitrator’s discretion.*) See also Fettering of discretion

### **Discriminate, discrimination**

When a person or a group of people is treated differently from other people because of personal characteristics such as their race, gender, sexual orientation, or religion. (*It is discrimination for an employer not to hire Roman Catholics.*) See also Prejudice

### **Dismiss, dismissal**

1. To fire an employee. (*The employer dismissed the employee without any explanation.*)
2. To refuse to deal with someone or something; to end something, like a hearing. (*The tribunal dismissed her claim because of lack of evidence.*)

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<sup>1</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC) at para 52.





### **Dispose of the complaint on the merits, disposition of the complaint on the merits**

Handling a case by reaching a decision after considering the issues. *(The tribunal disposed of the complaint on the merits and not on the basis of technical problems with the complaint form.)*

See also Adjudication; Issue in dispute; Merits

### **Dispute**

1. To argue against or to question. *(Derek disagreed with a complaint made against him, so he disputed it.)*

2. A quarrel or disagreement between people or organizations. *(The dispute came up between Gerald and the government because the government refused to issue a parade permit to him.)*

### **Dissenting reasons**

When a decision maker does not agree with the majority opinion, that person may write a dissenting opinion setting out their reasons.

### **Documentary evidence**

Written or printed matter submitted as proof of fact.

### **Document starting the case**

Known as the application, appeal, complaint or charge, depending on the tribunal and its legislation.

## **E**

### **Elope**

To let pass by or go by, like the passage of time. *(Over two weeks have elapsed since the hearing.)*

### **Electronic hearing**

A hearing held by a telephone conference call or a video conference. *(The parties, their lawyers, agents, and witnesses all participated in the electronic hearing by video conference.)* See also

Oral hearing; Written hearing



### **Enabling statute**

The act (or statute or regulation) that describes the powers, and sometimes the administrative systems, of a tribunal. Also known as a constituent statute.

### **Enforce a right**

To make sure that a right will be respected. (*The tribunal can provide remedies to enforce a right that is being interfered with.*) See also Remedy; Right

### **Ethical responsibility**

The actions and behaviours expected of all members of a profession and often set out in the code of conduct. An ethical responsibility is also a professional responsibility, but not all professional responsibilities are ethical responsibilities. (*My ethical responsibility as a lawyer is to follow through on promises I make to other lawyers.*) See also Code of conduct; Ethics; Professional responsibility

### **Ethics**

The accepted code of good conduct or generally accepted moral principles of a society. Ethical conduct means acting in a way that is honest, fair, equal, and shows respect for others and the law. It gives general direction about how to act but not specific rules about what to do. It protects the public and helps keep their trust in courts and other groups or institutions that make legal decisions. See also Ethical responsibility

### **Evidence**

The information that is presented to a tribunal to prove a fact and that decision makers consider when making their decision about a case. This information can include videotapes or documents, affidavits, visual demonstrations, and witness and expert testimony. (*There was no evidence brought to support the main claim.*) See also Admissible evidence; Allegation; Expert evidence; Rules of evidence; Testimony

### **Ex parte**

When a party makes a request at a hearing when the other party has not been informed about the hearing or does not attend the hearing. (*Helen, the respondent, asked for an ex parte hearing.*) See also Default; Notice; Proof of service



### **Examination, direct examination**

When a party calls a witness and asks that witness questions to have the witness describe what she or he knows about the facts of the case as evidence. Also called “direct examination” or “examination-in-chief.” (*Bob called Maya as a witness and conducted an examination of Maya.*)  
*See also* Cross-examination; Re-examination; Testimony

### **Exhibit**

An object or document admitted as evidence at a hearing. Exhibits are numbered, such as Exhibit 1, Exhibit 2, etc. (*The tribunal accepted the contract as Exhibit 1, the photo as Exhibit 2, and the videotape as Exhibit 3.*) *See also* Admissible evidence; Evidence; Rules of evidence

### **Expert evidence**

Opinion or information given by an expert witness about something proven to have happened in a case, based on the expert’s special knowledge or skill. (*The expert evidence supported the claimant’s position.*) *See also* Admissible evidence; Expert witness

### **Expert witness**

A person with special knowledge, training, skill, or experience in a specific area who can help decision makers understand the evidence in that area of expertise. An expert witness provides evidence-based opinions. (*The expert witness was a doctor who could give an opinion about how long it would take the employee to recover.*) *See also* Expert evidence; Factual witness; Witness

### **Expropriate, expropriation**

When a government takes a person's property away from them for a public purpose, such as building a road or an airport, etc. (*The government expropriated William’s land.*) *See also* Compensation



## **F**

### **Fact**

1. A truth that a person knows from their own experience of it. Only decision makers can determine the facts.
2. Evidence that proves something existed or happened. (*Nadia started her new job on March 1, 2006, and her first paycheque — which shows her first day of work — proves that fact.*)
3. Evidence that is relevant to what the legislation says are the issues to be answered in a case. *See also* Allegation; Evidence

### **Factual witness**

A person who knows something about the case and describes their observations. *See also* Expert witness; Witness

### **Fairness**

The terms “procedural fairness” and “natural justice” are often interchangeable, though natural justice is an older term and is now used less often. The essential requirements of “fairness” include notice of the case and the opportunity to respond, an unbiased decision maker, having the person who heard the case decide it, and knowing the reasons for the decision. *See also* Natural justice

### **Fees**

1. Money paid for services. (The fees were paid to the lawyer for the work she did at the hearing.)
2. Money paid to register something or to put in documents at a tribunal or court. (*The fees for service of a summons by the agent are \$25.*) *See also* File

### **Fettering of discretion**

A decision maker applying policy without considering the particulars of the case. (*The tribunal fettered its discretion by applying its blanket policy before reviewing the details of the case.*) *See also* Discretion



## **File**

To give a document or an object to the staff of a tribunal or the member at a hearing. (*Eleanor files an application at a tribunal.*) See also Admissible evidence; Case file; Evidence

## **Financial security**

How much an adjudicator is paid for their work does not and cannot depend on their decisions for the tribunal.

## **Force of law**

When all the legal steps needed to give legislation effect have taken place.

## **G**

### **Good faith**

Acting honestly and fairly; doing something with sincere intentions; having an honest reason for doing something. (*The employer's argument that there was cause for dismissing the employee was made in good faith.*) See also Bad faith

### **Grievance**

1. When a person thinks that something is illegal or unfair or is denied a right. (*The claim was filed because of John's grievance against his mother.*)
2. A disagreement between an employer and employees about a collective agreement or with a single employee over rights under the agreement. (*The employee filed a grievance.*) See also Collective agreement; Dismiss; Right

### **Grounds**

Reasons for doing something; reasons behind something. (Ellen asks for adjournment of the hearing on the grounds that her main witness is in the hospital.)



## H

### **Hearing**

The formal meeting that involves decision makers and the parties to the case. Hearings are used to allow parties to present evidence and arguments so the decision maker can make an informed decision. Hearings can be oral, written, electronic, by video conference, or by telephone conference. They may also be either public or closed (“in camera”). *(During the first day of the hearing, the parties' counsel made opening statements of their cases.)* See also Closed hearing; Electronic hearing; Oral hearing; Public hearing; Written hearing

### **Hearing panel**

The members of the tribunal who hear and decide a matter.

### **Hearsay evidence**

Information witnesses give about something they did not see or experience themselves but have only heard or read about. Courts generally don't admit hearsay evidence because it can't be tested, but administrative tribunals can accept hearsay evidence in some cases if they feel it is reliable. *(Anna wanted to testify about a work accident, but the evidence would be hearsay because she did not see the accident herself.)* See also Evidence; Testify; Witness

### **Hierarchy of laws**

The relative ranking of different types of legislation produced by different levels of government. See also legislative hierarchy

## I

### **Impartial, impartiality**

The quality of being neutral. Decision makers must come to a case with an open mind. And tribunals must have no opinion before they hear the evidence and arguments of both parties. *(Decision makers are not impartial if they do not like one of the parties.)* See also Neutral

### **In camera hearing**

In private. A hearing held in a place not open to the public.



### **Incident**

An event; something that happens. (*Carlos was injured at work in an incident involving three others.*)

### **Incompetent**

Persons who cannot rationally interpret events that they observe, who are incapable of communicating, or who are incapable of understanding questions asked at a hearing.

### **Independence, Independent**

1. Keeping the tribunals separate from government and from any person or group that could improperly interfere with or influence its decisions.
2. Someone who is not under the control of another person and is free to make decisions on their own. (*Tribunal members are independent of government when they make their decisions.*)  
*See also* Impartial; Neutral

### **Indirect evidence**

Evidence that a witness has not seen, heard, or experienced firsthand. Some examples are circumstantial evidence and hearsay evidence. *See also* Circumstantial evidence; Hearsay evidence

### **Information**

Any element the parties (or their counsel or witnesses) bring forward to a tribunal to prove their case, before or during the hearing process. “Information” is not a legal term. *See also* Arguments; Evidence; Facts

### **Infringement of rights**

When someone’s rights have been violated; something that interferes with a person’s rights. (*The new regulations are an infringement of rights of the co-op residents.*) *See also* Right



### **Inquisitorial hearing style**

A hearing style similar to a public inquiry. Often one party presenting alone or two or more parties presenting. One or more decision makers who listen and who have the power to say what evidence they want, whether or not the parties bring it voluntarily. Often used where a public interest is present – such as an environmental board or the workers’ compensation board.

### **Institutional bias**

A decision-making structure that creates unfairness. The bias exists because of the way the organization is set up, not because of the attitudes or ideas of the people working in it. This structure gives advantage to certain groups or ideas over others. *(The tribunal showed institutional bias because the same staff member investigated, prosecuted, and made the final decision in the case.)*

### **Interim (or interlocutory) decision or order**

1. An order made by a decision maker before the time of the final decision. *(A commissioner gave an interim order requiring the parties to disclose their evidence.)*
2. An order that only lasts for a certain amount of time or until some event happens. *(The adjudicator’s interim order delayed the award until the appeal of the decision has been dealt with.)* See also Order; Stay

### **Interveners**

People who have an interest in the case and are given standing by the decision maker to present evidence or make arguments before a decision is made.

### **Investigate, investigation**

Carefully trying to find out the facts about something. *(The employer had carried out an investigation to learn more about the claims.)*

### **Issue**

The question(s) the decision maker is answering. An issue may require a decision about the process, law, facts, and outcome.





### **Issue in dispute**

The things the parties disagree about, either about the facts of what happened or about what the law says, and which must be resolved by the decision maker. (*A tribunal must resolve all the issues in dispute in its decision.*) *See also* Dispute

## **J**

### **Joinder**

Two or more applications or complaints being heard by a panel at the same time.

### **Judicial notice (or official notice)**

Act by which a court or tribunal of its own motion, and without the production of evidence or testimony, recognizes the existence and truth of certain facts having a bearing on the case, which, from their nature, are universally regarded as established by common notoriety (for example, historical events, main geographical features, the laws of the country).

### **Judicial review**

When a court checks over a decision made by a tribunal to make sure the tribunal did not go beyond what it is allowed to do under the law or did not fail to do what it should have done. *See also* Appeal; Jurisdiction; Mandate of an organization; Reconsideration; Review; Stay

### **Jurisdiction**

Power of a tribunal to deal with a dispute based on the type of dispute and the geographical area where the dispute happens. A tribunal gets its jurisdiction from an act passed by the government. (*A human rights tribunal hears human rights disputes about rental properties but does not have jurisdiction to hear disputes over rent between landlords and tenants.*) *See also* Act; Judicial review; Mandate of an organization; Preliminary motion; Reconsideration



## **L**

### **Law**

The rules made by the government or courts that govern society and give rights and obligations to people. (*The Criminal Code is a law of Canada.*) See also Act; Legislation; Obligation; Regulation; Right; Statute

### **Lawyer**

Person who is trained and authorized to give legal advice to people. (*Lawyers explain the law and advise people more than they go to court.*) See also Agent; Counsel; Law; Represent; Representative

### **Leading question**

A question that suggests or contains the answer the party wants the witness to give. A leading question often has a “yes” or “no” answer. Leading questions are not ordinarily allowed during direct examination, except for basic non-controversial matters. Leading is allowed in cross-examination. (*When Keira asked, "Is it true that the window was broken around 5:00 p.m.?" she is asking a leading question because her question contains the information she wants from Greta.*) See also Cross-examination; Examination; Open question; Re-examination

### **Leave to appeal**

Permission to appeal a tribunal's decision. (*Fiona must get leave to appeal from a court before she can appeal a tribunal's decision.*) See also Appeal

### **Legal**

1. Related to the law or created by the law. (*The agent explained the purchaser's legal obligation.*)
2. Permitted by the law. (*The parade was not a legal activity because the permit had been refused.*)

### **Legal burden of proof**

The obligation to bring enough reliable and persuasive evidence to convince decision makers by the end of the case. The legal burden of proof usually rests with the applicant in the case. *See also* Burden of proof

### **Legal tests (or criteria)**

Tests or requirements that the authority document requires decision makers to consider when making a decision. That is, the legislation or authority documents say which facts are relevant to a particular decision. Also known as the elements of the case or “what must be proven.”

### **Legislation**

Statutes and regulations made law by Parliament (in Canada – the federal jurisdiction) or the Legislature (in provinces and territories). (*The Divorce Act is legislation that deals with divorce.*) *See also* Act; Law; Regulation; Statute

### **Legislative hierarchy**

The order of precedence of laws is based on the level of government which created it. For example, In Canada, the Constitution, including the Charter of Rights and Freedoms, is the highest level of legislation. No act, code, statute, policy, or other lower level of legislation can contradict or conflict with the Constitution or the Charter. *See also* Hierarchy of laws

### **Liabe**

When the law says that someone is responsible to another person for a loss or injury to that person, because of something they did or did not do. (*The company was liable for the accident because they knew the equipment needed to be serviced.*) *See also* Law; Liability

### **Liability**

When someone has an obligation to do something or to not do something under the law. (*People who sign a contract are taking on a liability to each other under the contract.*) *See also* Contract; Damages; Liable; Obligation



## M

### **Mandate of an organization**

Activities that an organization must carry out; a tribunal can do only the things that the law requires it to do. (*The Labour Relations Board cannot handle issues that are outside the mandate of the organization.*) See also Judicial review; Jurisdiction; Reconsideration

### **Mandatory**

When something is required to be done. (*It is a mandatory requirement to serve documents by registered mail.*)

### **Marginal notes**

Short, distinctive notes on the left side of the printed act used to describe the content of each section of the legislation. These are not part of the enactment. They are for convenience and reference only.

### **Maxims**

Legal ideas that have been accepted and recognized as reasonable and fair. They are used to interpret legislation.

### **Mediation**

One way to settle disputes; a person called a mediator helps the parties work out a solution to their dispute. A meeting with a mediator may also be called a settlement meeting or a settlement conference. (*Before filing a grievance, the parties decided to try mediation.*) See also Alternative dispute resolution; Conciliation; Mediator; Settlement

### **Mediator**

A neutral and fair person who helps people talk through and solve a problem without taking sides. (*The mediator first met with each side alone to hear their stories.*) See also Arbitrator; Impartial; Mediation; Neutral



### **Member**

A person who holds hearings and makes decisions at an administrative tribunal. *(The tribunal has assigned your file to one of its members.)* See also Adjudicator; Administrative tribunal; Decision maker

### **Merits**

Real issues in the application, complaint, claim, or appeal. *(This decision was made on the merits and not for any technical reason.)* See also Dispose of the complaint on the merits

### **Mitigate**

Reducing or limiting harm or a loss. *(Mike is suing his employer for firing him illegally but he should look for a new job to mitigate his losses.)*

### **Monetary award**

Decision of a tribunal giving money to a party. *(Mike expects to receive a monetary award, but he cannot wait for that.)* See also Award; Compensation; Damages

### **Monetary remedy**

Decision that a tribunal can make that gives money to a party. *(Alicia got \$6000 in damages as a monetary remedy, plus she got her job back.)* See also Award; Compensation; Damages; Remedy

### **Motion (or application)**

A written or spoken request to the decision maker requesting some remedy. An application may be ex parte. It may also involve one or more other parties. *(Kasper makes a motion for evidence to be disclosed at the hearing.)* See also Disclosure of evidence; Interim order; Moving party

### **Moving party**

Party who makes a motion, meaning they request something from the tribunal. *(It was Kasper's motion for disclosure of evidence, so Kasper is the moving party.)* See also Motion; Party



## N

### **Natural justice**

The duty to act in good faith and without bias in adjudicating a matter; to give each party an opportunity to know the case against it and to provide a response. *See also* Fairness

### **Negotiate, negotiation**

When people talk and compromise to settle a dispute or solve a problem. (*Hugo and his landlord Veronica don't agree about the rent for next year, and so Hugo suggested negotiation as a way of finding an amount of rent acceptable to both of them.*) *See also* Agreement; Alternative dispute resolution; Contract

### **Neutral**

Not biased or prejudiced. (*Decision makers at tribunals must be neutral.*) *See also* Arbitrator; Code of conduct; Impartial; Mediator

### **Non-monetary remedy**

A decision by a tribunal that gives the winning party something other than money. (*Lia wants only a non-monetary remedy from the tribunal, because she asks only for an order to evict her tenant Tania for not paying rent.*) *See also* Award; Monetary award; Monetary remedy; Order; Remedy

### **Notice**

1. When someone gets told about something by someone else who writes or speaks to them about it. (*Milan sent his landlord Mitch a letter so Mitch has received notice that urgent repairs are needed.*)
2. A notice is a document that informs a person about something happening at a tribunal that they need to know about. (*Tran receives a notice of hearing, which tells him to attend a hearing at the tribunal at 10:00 a.m. on December 13, 2007.*) *See also* Default; Ex parte; Notice of motion; Notification; Proof of service



### **Notice of motion**

Document informing a party about a request that will be made to the tribunal. (*The notice of motion that Dom received tells the type of request, the order asked for, the date, time, and place of the hearing of the motion.*) See also Interim order; Motion; Notice

### **Notify, notification**

Informing a person about something. (*The tribunal asked for proof that Jake received notification of the hearing.*) See also Notice

## **O**

### **Oath**

How a person promises or swears to tell the truth when giving testimony or making an affidavit. (*Adele took an oath and swore that her affidavit was true.*) See also Affidavit; Affirm; Perjury; Testify; Witness

### **Objection**

A written or spoken challenge to a tribunal or decision maker when one party opposes a piece of evidence the other party is presenting or the way in which the other party is proceeding with its evidence. (*Bernice's witness has been talking about something not connected to the case, and so Laura gets up and says, "Objection, this is not relevant."*) See also Admissible evidence; Evidence; Rules of evidence

### **Obligation**

A duty created by the law or something that has to be done. (*The employer has an obligation to do what the tribunal ordered it to do.*) See also Mandatory

### **Ombudsperson**

A government official who hears and investigates complaints by citizens against other officials or government agencies.



### **Omit, omission**

Not doing something that a person is required to do by law; a person may be held liable for their omission. (*Drivers who don't stop at red lights can be held liable for their omission.*)

### **Open question**

Style of question asked to a witness, one that does not suggest or contain the answer that the party wants the witness to give. (*Rachel wants her witness to describe how Rachel was injured so she used the open question, "What happened on the morning of February 10, 2006?" instead of the closed question, "Did the broken machine injure me at work on February 10, 2006?"*) See also Cross-examination; Examination; Leading question; Party; Re-examination; Witness

### **Opening statement**

What a party says at the beginning of a hearing, before giving their evidence, to explain the issues in dispute and the evidence that they will have. (*In his opening statement, Harry explained the other kinds of evidence he would present.*)

### **Oral decision**

A decision that is spoken aloud by a decision maker at the end of a hearing, instead of being written out later. (*The tribunal was able to deliver an oral decision immediately.*) See also Decision; Hearing; Written decision

### **Oral evidence**

Answers given by a witness in testimony at a hearing. (*The complainant's mother is in hospital and not able to give oral evidence.*) See also Affidavit; Cross-examination; Examination; Re-examination; Testimony; Witness

### **Oral hearing**

When the parties, their lawyers, and witnesses go to the tribunal in person to present their case in a formal meeting. (*An oral hearing was held in August and written arguments were provided in September.*) See also Closed hearing; Electronic hearing; Oral hearing; Public hearing; Written hearing





## **Order**

How a tribunal declares that something must be done. An order can be final or interim. (*The tribunal ordered an employer to get safer equipment for its employees and also required that the order be posted in the worker's lunchroom.*) See also Compensation; Damages; Decision; Interim order; Redress mechanism; Remedy; Restitution

## **P**

### **Pain and suffering**

A type of damages that is money given to a party for experiencing emotional problems (pain, fear, etc.) after being harmed by the respondent. (*An award for pain and suffering is not a punishment but must equal the misery.*) See also Damages; Remedy

### **Panel**

One or more decision makers working as a group (the number depends on the legislation).

### **Participation**

To be involved in a process that includes others. (A person (or group of people) affected by a decision has the right to participate in the process leading up to that decision.)

### **Party, Parties**

1. Person or organization, company, or government agency in a dispute that a tribunal will handle, including the applicant or a claimant, a complainant or appellant and respondent. Other participants such as witnesses, lawyers, or agents are not parties. (*Lucie is an applicant and Javed is a respondent so they are both parties in this case.*)
2. Person or organization that made a contract or an agreement with another. (*Pierre and Jim are the only parties to the contract.*) See also Agreement; Appellant; Applicant; Claimant; Complainant; Contract; Respondent



### **Perceived bias (also apprehended bias)**

A reasonable apprehension of bias. Perceived bias exists when an imagined informed, reasonable, and right-minded person considers the facts of the relationship between a decision maker and the issue and concludes the decision maker is not impartial and cannot decide fairly. *See also* Actual bias; Bias

### **Perjure, perjury**

A lie told by a person under oath (written in an affidavit or spoken while giving testimony). *(While testifying, Vincent lied and committed perjury.) See also* Affidavit; Affirm; Oath; Testimony

### **Political accountability**

The responsibility or obligation of government officials to act in the best interests of the public or face consequences.

### **Postponement**

Rescheduling of the start of the hearing to another day.

### **Preamble**

An introductory statement that gives the reasons for and intent of the legislation.

### **Precedent**

A decision on a question of law that becomes an authority for similar cases or questions of law that come up later. *See also* Stare decisis

### **Pre-hearing conference**

A meeting of the parties and the tribunal or mediator before the formal, main hearing of the case to decide on the issues in dispute, to set dates for steps like disclosure of evidence, and to set the length of time needed for the hearing. *(At the pre-hearing conference, the parties were actually able to settle their disagreement.) See also* Disclosure of evidence; Hearing; Issue in dispute; Mediator; Settlement

## **Prejudice**

1. Injury or harm.
2. Not being able to act on a right.
3. Bias: agreeing with one side over another without good reasons. (*Ali suffered prejudice [1] because he lost his job when he was in an accident. His case was then again prejudiced [2] because he was not able to take his claim to court after a member of the Workers' Compensation Tribunal made a decision against him that was based on racial prejudice [3].*) See also Discrimination; Impartial; Neutral; Right

## **Preliminary motion**

A request made to a tribunal before the hearing starts, on preliminary issues or preliminary matters. Preliminary motions can also be called preliminary applications or interim motions. (*The respondent's preliminary motion challenged the jurisdiction of the tribunal.*) See also Adjournment; Disclosure of evidence; Interim order; Jurisdiction; Motion

## **Preliminary objection**

A challenge made to a tribunal before the hearing starts, on preliminary issues or preliminary matters. See also Objection

**Preponderance of evidence** See Balance of probabilities

## **Presiding member**

The chair of a panel of decision makers. The person who directs, controls, or regulates proceedings on behalf of the panel.

## **Presumptions**

Rule of law by which finding of a basic fact gives rise to the existence of presumed fact, until the presumption is rebutted. Some examples of presumptions made by courts are: the presumption of innocence; that, in certain circumstances, a person missing for seven years has died; that persons acting in an official capacity have been properly appointed to office, etc.



### **Priority words**

Words that help interpreters to recognize whether a section is mandatory or permissive. Examples: “must,” “may,” “shall,” and “will.”

### **Privative clause**

A clause in a statute eliminating or restricting the scope of judicial review.

### **Probative / Probative value**

Something which furnishes, establishes, or contributes to proof. Evidence has “probative value” if it tends to prove an issue. Evidence that is strong in proving a point is said to have “high probative value”; evidence that is weak in proving a point is said to have “low probative value.”

### **Procedure**

Steps to take and documents to use for a case at a tribunal. (*The rules of procedure tell how to send notices to other parties.*) See also File; Notice; Rules of procedure, rules of practice and procedure; Time limit

### **Proceeding**

Form and manner of conducting business before a court or administrative tribunal. Usually used to describe the entire course of an application or complaint from the time it is filed until a final decision is issued. (*There has been a motion for adjournment of this proceeding.*)

### **Proclamation**

The announcement of Royal Assent of legislation, usually by the Lieutenant Governor-in-Council or Governor-in-Council, which brings the legislation into force or repeals legislation.

### **Professional responsibility**

The actions or behaviours required by members of a profession. (My professional responsibility as a lawyer is to renew my membership in the law society by filling out the required form and paying a fee and the insurance premium.) See also Code of conduct; Ethical responsibility



### **Proof of service**

An affidavit or receipt that confirms that another document was served to a witness or a party and tells when and how the document was served. *(The proof of service shows that the notice of motion was served on the respondent on Monday, December 11, 2007, by hand delivery.)* See also Notice; Notice of motion; Serve

### **Prosecutorial hearing style**

A hearing style similar to a criminal trial – a person is facing a charge; the prosecutor has the obligation to prove the charge; the person is defending against the charge. One or more decision makers who listen but do not try to help one party more than the other to present the case.

### **Provision**

A part of a law, or a regulation, or a contract, a will, or other legal document. A provision can also be called a clause, paragraph, section, article, or term. *(The respondent claims that this provision of the Act violates the Charter of Rights.)*

### **Public hearing**

A hearing that the public can attend or find out about. The public means people other than the parties, their lawyers, agents or witnesses, and the decision maker and staff of the tribunal. See also Closed hearing; Hearing

### **Purpose**

The reason for which something is done or why something exists. The purpose of an act is the goal the legislation was created to achieve.

A statement that gives the reasons for and intent of the legislation. The purpose is a numbered section in the act and can be used to interpret the act.

## **Q**

### **Quasi-judicial**

Almost like a judge or court of justice. (Tribunals are called quasi-judicial because they act like courts when they resolve disputes.) See also Adjudication; Decision



## **R**

### **Reasons**

Written explanation of the analysis or reasoning which forms the basis of a decision.

### **Recess**

A short break in a hearing which is to continue the same day, as opposed to an adjournment to another day. *See also* Adjournment

### **Reconsideration**

When a tribunal reviews or revisits its own decision, so that it can check if the decision is correct. *(Reconsideration is sometimes called reopening or rehearing.) See also* Appeal; Judicial review; Review

### **Record**

The official record of a case, which could include a transcript of the proceedings and all the documents filed as part of the hearing.

### **Redress mechanism**

A way to help a person who suffered harm. *(The tribunal considered what redress mechanism was available to it.) See also* Compensation; Damages; Remedy; Restitution

### **Re-examination**

Questioning a witness again, after cross-examination of that witness, about new things talked about during cross-examination. *(After Guy is done with cross-examination, Bob's re-examination of the witness was meant to let her explain some answers she gave during cross-examination.) See also* Cross-examination; Examination; Testimony; Witness

### **Regulate**

Making rules and enforcing them to control some activity. *(The Milk Board regulates the sale of milk products.) See also* Law; Regulation



## **Regulation**

Rules made to provide detail to statute law; each Act has its own regulations. A regulation can also be called an order, rule, form, or bylaw. *See also* Act; Law; Legislation; Regulate; Statute

## **Relevant evidence**

Evidence that relates to something the legislation says must be proven. Evidence must be relevant (and reliable) to be admissible. *(The doctor's report is relevant evidence that shows when Julia became sick.) See also* Admissible evidence; Reliable evidence; Rules of evidence

## **Reliability**

Concerns the accuracy of a witness's testimony. This is the witness's ability to accurately observe, recall and recount events. This is distinguished from credibility. *See also* Credibility

## **Reliable evidence**

Evidence that truly and accurately depicts or describes the events. Evidence must be reliable (and relevant) to be admissible. *See also* Admissible evidence; Relevant evidence

## **Remedy**

To correct a situation or make it good again: a way to put right or help out a person who has been injured or harmed, or to make sure that a person's rights will be respected or that something does not happen again. *(The tribunal ordered Christina to leave her apartment because she has not paid rent for the last few months, which was the remedy Betty had asked for.) See also* Compensation; Redress mechanism; Restitution; Right

## **Render a decision**

To make a decision and publish it to the parties or the public. *(The tribunal promised to render a decision before the end of the month.) See also* Adjudicate; Arbitrate; Decide

## **Reply**

The applicant or complainant's answers to an intervener or to a respondent. A reply becomes necessary when the other party has introduced new evidence to the matter thus making it necessary for the applicant or complainant to introduce more facts.



### **Reply evidence**

New information that was not expected by the applicant and that arises from new and relevant evidence presented in cross-examination.

### **Represent**

1. To speak or act in the place of another person. (*Farah, an advocate, represents Joseph at the hearing.*)

2. To claim something about a fact. (*Counsel for the applicant represented to the tribunal that the applicant had been illegally fired.*) *See also* Advocate; Agent; Allege; Allegation; Counsel; Fact; Lawyer; Representative

### **Representations (or arguments)**

Sometimes called “submissions.” Consist of oral or written arguments presented to the tribunal. Representations are generally made after the evidence (testimony and documents) has been presented. Submissions are intended to convince the panel to decide the case a certain way. New evidence should not ordinarily be introduced during the submissions stage.

### **Representative**

A person who acts for another person. (*Margaret's lawyer Alex is her representative and all correspondence goes to him.*) *See also* Advocate; Agent; Counsel; Lawyer; Represent

### **Request**

To ask for something. (*Guy requested the tribunal adjourn the hearing.*) *See also* Application; Motion

### **Respondent**

The person against whom an appeal, an application, a complaint, or a claim is made, and who must answer to it. (*Marcus filed a complaint against Bridget, so Bridget is the respondent.*) *See also* Appellant; Applicant; Claimant; Complainant; Party





## **Responding party**

The party that must answer the moving party's motion or application. (*Zoë asked the tribunal to make Laila disclose her evidence. Laila becomes the responding party for this one motion.*) See also Motion; Moving party

## **Response**

1. Part of the hearing when a respondent presents evidence and arguments against the other side. (*After hearing the claimant's evidence, the tribunal started to hear the response's evidence.*)
2. Document containing the respondent's facts and arguments. (*A party must file a response after being served with a claim.*)
3. Legal concept that justifies behaviour that would otherwise be illegal. (*The response explained why the person was fired without any warning. This is also called defence of cause.*) See also Argument; Evidence; Hearing; Respondent

## **Restitution**

1. When a person returns something that they should not have had in the first place. (*Jared wrongly reported his work hours so he had to repay Rose \$100 to make restitution.*)
2. Giving something to a person to make up for their injury or a loss. (*The tribunal ordered and Andrew received \$500 in restitution.*) See also Compensation; Damages; Redress mechanism; Remedy

## **Review**

To check over something to make sure it is correct, or to reconsider it, such as when a tribunal may check its own decision, or a court considers a decision of a tribunal. (*The decision was reviewed by a new panel of members.*) See also Appeal; Judicial review; Jurisdiction; Reconsideration

## **Right**

A liberty or privilege that the law says a person can do or have. (*You may have the right to be represented by a lawyer at a tribunal, but you may not have the money for it.*) See also Law



### **Rules of evidence**

A set of rules that a tribunal uses to figure out if some fact or thing can be accepted for its consideration: Is it relevant, reliable, necessary, and fair? (*The lawyers started arguing over the rules of evidence and how they applied to admitting the store receipt.*) See also Admissible evidence

### **Rules of procedure, rules of practice and procedure**

Rules containing the steps to take and documents to use for a case at a tribunal. (*The Rules of Procedure indicate the time limit for asking the tribunal to review a decision.*) See also Notice; Procedure; Time limit; Reconsideration

## **S**

### **Section headers**

Short, distinctive notes to describe the content of each section of the legislation. These are not part of the enactment. They are for convenience and reference only. They are printed in the line above the section of the act.

### **Security of tenure**

A decision maker can stay in their job (unless there is some legitimate reason to remove them) long enough to make decisions for the tribunal without pressure.

### **Seized**

The point in a case when a decision maker not continuing with it to the end puts the duty to act fairly at risk. This point is usually when the decision maker has heard some substantive evidence.

### **Self-serving evidence**

Evidence that a witness has created for himself or herself; due to the risk of fabrication, the courts generally do not allow a witness to submit self-serving evidence.



### **Serve**

To deliver, mail, or hand over documents to someone according to the rules of procedure that apply to the tribunal. *(The tribunal ordered the documents to be served by registered mail to the respondent's last known address.) See also Notice; Proof of service*

### **Service**

Delivery of a legal document such as a summons or a writ to the person named in the document, or to a person with whom it can legally be left. When documents are so delivered, they are then said to have been personally served. Service is proved by filing a copy of the document which has been signed by the recipient acknowledging service or by filing an affidavit sworn by the person who delivered the document which gives the details of the manner in which it was served.

### **Settle, settlement**

Agreement ending a dispute; it is usually written down and signed by the parties. *(With the help of a mediator, Edith and Ivan found a solution to their dispute and reached a settlement.) See also Agreement; Alternative dispute resolution; Conciliation; Mediation; Negotiation*

### **Sever**

To divide something or break it up into parts. *(Janet's application to the tribunal deals with two different, unrelated respondents and so the tribunal decided to sever the application, to deal with each of them separately.) See also Application; Parties*

### **Sitting**

A session of a hearing. A hearing might have several sittings. Members of a panel hearing a case are "sitting" on that case.

### **Social context awareness**

An understanding of the social reality that forms the background to a particular case. For example, the fact that racism or gender bias is common in a particular community.



### **Speculate, speculative**

When something is not practical or it is just a guess because some information is missing. (*The applicant's actual costs are only speculative at this time, so I am going to adjourn the hearing until he can bring in his receipts.*)

### **Standard of proof**

The degree to which a party with the burden of proof must prove what that party must prove. In most administrative law cases, this is the balance of probabilities, or “what is more likely than not.” *See also* Balance of probabilities

### **Standing (also status)**

The legal right to participate in a proceeding. To obtain standing, a person or organization must show the decision maker they have a tangible interest at stake in the proceeding. The decision maker decides which parties have standing.

### **Stare decisis**

Latin for “let the decision stand.” A policy of following rules or principles laid down in previous judicial decisions unless they go against the ordinary principles of justice. *See also* Precedent

### **Statute**

A law made by the government, often called an *Act*. (*The Divorce Act is a statute.*) *See also* Act; Legislation; Law; Regulation

### **Statutory interpretation**

The process of determining the meaning of words or phrases in legislation.

### **Stay**

To suspend or put off until later, such as a stay of a decision during an appeal or a stay of a case forever. (*Tammy applied to stay the decision because she does not want to have to follow the decision until the court finishes its review.*) *See also* Adjourn; Appeal



### **Submit**

1. To hand in or give something. (*Aaron hurried to submit his response to the tribunal.*)
2. When a party tells a decision maker of its opinion about something; can be a written submission. (*During the hearing, Gio submits that his employer discriminated against him.*) See also Argument; Hearing; Response; Submission

### **Submission**

Argument made or position taken by a party during a hearing; it can be written. (*My lawyer made a submission on how the new law should apply to my case.*) See also Argument; Closing argument; Hearing

### **Subsequent information**

Any new information obtained after evidence has been received at a hearing.

### **Substantial prejudice**

Serious harm or injury or interference with a right. (*The tribunal allowed Brian to file his complaint late because the other parties would not experience substantial prejudice by the late filing.*) See also Prejudice; Time limit

### **Substantiate**

To show evidence to prove something. (*Mira showed the dates in her lease agreement to substantiate that her lease was for one year.*) See also Evidence

### **Summons to witness (or subpoena)**

1. A summons is a written order that tells a person that they are required to appear on a named day and answer questions; it can tell a person to bring documents or other things to the tribunal. (*Agatha will be a witness at a hearing so she received a summons that tells her when to show up for the hearing next month.*)
2. To serve someone with a summons. (*Agatha was summoned to appear next Monday at 9:00 a.m.*) See also Hearing; Order; Serve



## **T**

### **Testify**

To take an oath or affirmation and give oral evidence in a hearing. (*Josie asked Tia to testify at the hearing.*) See also Expert witness; Testimony; Witness

### **Testimony**

Answers given by a witness at a hearing. (*Tia's testimony lasted about an hour.*) See also Cross-examination; Examination; Re-examination; Witness

### **Time limit**

The amount of time a person has to do something; also, a deadline. (*Corinna has a time limit of 60 days to appeal a decision.*) See also Procedure; Substantial prejudice

### **Transitional provision**

This provision sets out how and when a new act will replace an earlier act, what steps will be taken to phase in a new or amending act and how changes will apply to anyone affected by them. An act may include a transitional provision if, for example, specific provisions of the previous act will continue to be used for some time or if the provisions may affect many people.

### **Transparency**

Communicating information about what is being done and why it is being done. Transparency is one way to show that the decision-making process is fair and unbiased.

### **Tribunal**

An organization of decision makers formed to find facts and interpret legislation. Tribunals include agencies, boards, commissions, professional disciplinary bodies, and other similar organizations.



## U

### ***Ultra vires***

Latin for “beyond the powers.”

### **Undertaking**

An assurance. Often a promise made by a party or their legal counsel to the court to carry out a particular task or provide specific information.

## V

### **Vires**

From the Latin, meaning “having the authority or power.”

### **Void**

1. When something is not legally valid, meaning it has no effect under the law. (*Ian and Sandra signed a contract that turned out to be void.*)
2. To declare that something is not legally valid and has no effect under the law. (*The tribunal decided to void a notice sent by Patricia to Malik.*) See also Contract; Legal; Notice

### **Voluntary**

Choosing to do something; not being forced to do something. (*Joanne’s decision to take back her accusation against her supervisor was voluntary.*) See also Consent

## W

### **Weigh evidence**

To look at all the admitted evidence and determine how useful it is to decide the answer or issue in question.

### **Withdrawal**

When an applicant or complainant notifies the tribunal that it is abandoning an application or complaint.



### **Witness**

Person who knows something about a case and is called to a hearing to answer questions under oath. *(As a witness at the hearing, Courtney will testify about Martin's accident.)* See also Affirm; Cross-examination; Evidence; Examination; Oath; Re-examination; Testimony

### **Written decision**

The tribunal members' written explanation of their ruling, including any orders and remedies in it. *(It is our practice to send the parties the written decision within a month after the hearing takes place.)* See also Decision; Oral decision; Order; Remedy

### **Written hearing**

Type of hearing in which the decision maker examines written evidence and arguments of the parties to make a decision about their dispute. Written hearings are sometimes called paper hearings. *(The written hearing has not taken place because the written arguments were late due to a snowstorm.)* See also Electronic hearing; Hearing; Oral hearing; Public hearing