

Apprenticeship and Certification Appeal Board

Appellant's Guide

The Appeal Board Appellant's Guide

The Role and Responsibilities of the Apprenticeship and Certification Appeal Board

The Apprenticeship and Certification Appeal Board (Appeal Board) is appointed by the Minister under *The Apprenticeship and Certification Act* (Act) and operates according to the Act and the *Appeals Procedure Regulation*.

The Appeal Board hears appeals about decisions made by the Executive Director of Apprenticeship Manitoba. The Appeal Board operates independently from the Apprenticeship and Certification Board and Apprenticeship Manitoba.

The Appeal Board has the authority to confirm, vary or rescind decisions made by the Executive Director, or to refer the decision back to Apprenticeship Manitoba for reconsideration. It does not have the authority to order a repeal of, or amendment to, a section or sections in trade regulations or in the Act.

The Appeal Board's decision is final. No further appeals may be made.

PART 1: FILING AN APPEAL

The person who appeals a decision made by the Executive Director of Apprenticeship Manitoba is called the “appellant.”

The Executive Director or the person acting on the behalf of the Executive Director of Apprenticeship Manitoba is called the “respondent”.

1. How an appellant files an appeal

- a) The appellant obtains a Notice of Appeal Application form at manitoba.ca/apprenticeship on the Appeal Board page, under About Us: Apprenticeship Manitoba or contacts the Secretary to the Appeal Board for a Notice of Appeal application form at ApprenticeshipAppeals@gov.mb.ca or 204-805-6588.
- b) Along with the completed Notice of Appeal application, it is recommended that the appellant also submit a written report outlining the reasons for making the appeal and what decision the appellant is seeking from the Appeal Board. As stated on the Notice of Appeal application, the appellant must attach a copy of the letter from the Executive Director, Apprenticeship Manitoba, regarding the decision. The appellant should also provide all relevant information to the situation that was previously provided to the Executive Director. For example, relevant employer letters or medical information may be included.

The Appeal Board will not consider information related to the situation that was not provided to the Executive Director, Apprenticeship Manitoba, to inform their decision.

If new information is deemed relevant by the appellant, then the appellant should provide the information to the Executive Director of Apprenticeship Manitoba, prior to proceeding with a Notice of Appeal application.

All information submitted is confidential and will be handled according to provisions set out in *The Freedom of Information and Protection of Privacy Act* (FIPPA). Copies of the appellant’s documents will only be given to the members of the Appeal Board who hear the appeal, and the Executive Director of Apprenticeship Manitoba.

The appellant must submit the completed Notice of Appeal application within 30 days of receiving the written decision from the Executive Director. The appellant must send the application and any additional documentation to:

Secretary, Apprenticeship and Certification Appeal Board
Email: ApprenticeshipAppeals@gov.mb.ca

2. Acknowledgement of the Notice of Appeal

The Secretary sends the appellant a letter confirming receipt of the appeal application and sends a copy of the confirmation letter to the Executive Director of Apprenticeship Manitoba. The Executive Director prepares a written report documenting the appellant's apprenticeship training and certification history and the reason for the decision made by the Executive Director. This report is provided to the Secretary within 20 business days, who then sends a copy to the Appeal Board and the appellant.

Based on the documentation provided, the Appeal Board can decide whether or not to hold a hearing. As set out in section 6(2) of the *Appeals Procedure Regulation*, if the appeal is found to be frivolous, vexatious or does not comply with requirements set out in the *Appeals Procedure Regulation* the Appeal Board may uphold the decision made by the Executive Director without holding a hearing. If this is the case, the Secretary will notify the appellant in writing.

If the Appeal Board decides to hold a hearing upon receiving a notice of appeal, the Board will fix a time, date and place for hearing the appeal. At least five days before the hearing, the Secretary sends the appellant and Executive Director of Apprenticeship Manitoba a Notice of Hearing as well as the Secretary's contact information.

The appellant may bring a representative to the hearing to speak on his/her behalf. If the appellant intends to bring a representative, the Secretary must be informed in advance of the hearing date.

3. Change of date/special accommodation

The Appeal Board has the authority to make a decision regarding the appellant's application without the appellant's presence at the hearing. The appellant does have a right to appear before the Board, however, and if the appellant is unable to attend the hearing, s/he can make arrangements to participate by telephone, or request to change the hearing date.

If the appellant wishes to participate in the hearing by telephone, the Secretary must receive this request at least three hours before the hearing is scheduled to begin. If the appellant wishes to request that the hearing be rescheduled, the Secretary must receive this request at least seven (7) days before the scheduled hearing date.

A change of date will be considered wherever possible, but cannot be guaranteed.

PART 2: THE APPEAL HEARING

1. Who attends the appeal hearing?

The Appeal Board consists of a Presiding Officer, one or two people representing employers in the applicable trade, and an equal number of people representing employees in the applicable trade. The Secretary will also attend the hearing, but is not a member of the Appeal Board.

Although the Appeal Board has independent jurisdiction and authority, the Minister has the authority to and may appoint members of the Apprenticeship and Certification Board, Sector Committees or Industry Working Groups to the Appeal Board. The Minister may appoint any person to the Appeal Board as long as that individual is knowledgeable about the trade to which the appeal relates.

Hearings are informal and typically 30 - 45 minutes long. They are audio recorded to ensure accuracy and for future clarification if necessary.

A hearing before an appeal board is open to the public unless the presiding officer considers it to be in the public interest to direct that the hearing be closed to the public.

2. Starting the appeal presentation

Prior to the appellant's attendance, the respondent presents the written report to the Appeal Board and, after answering questions, leaves the room. When the appellant is called into the room, the Appeal Board's Presiding Officer introduces the members of the Appeal Board and any other people in attendance.

The Presiding Officer confirms the nature of the appeal request with the appellant and inquires as to whether or not the appellant read the report submitted by the Executive Director.

The appellant is then given time to make a presentation on the submitted documents and application as well as any additional information about the appeal. The Appeal Board then asks the appellant questions about the appeal.

3. The hearing and FIPPA

Under FIPPA, records containing apprentices' and journeypersons' personal information as well as employer-specific information are strictly for the use of Apprenticeship Manitoba staff in order to administer apprenticeship programs.

Third party information belonging to another apprentice, journeyperson or tradesperson cannot be discussed at the appellant's hearing. The appellant's appeal

will be judged on its own merits.

4. Evidence

The Appeal Board is not bound by the Rules of Evidence that apply to judicial proceedings. In a court of law, for example, information given to the appellant by a third party cannot be presented as evidence (this is called “hearsay”). However, the appellant may use this type of evidence at an Appeal Board hearing.

Whatever evidence is provided, the Appeal Board will attempt to determine its credibility and reliability. The Appeal Board will review any documentation provided by the appellant in a careful and fair manner.

5. Ending the hearing

Once the appellant has presented and the Appeal Board has had an opportunity to ask questions and clarify any outstanding issues, the appellant has a final opportunity to provide information. The Presiding Officer then thanks the appellant, after which the appellant may leave.

PART 3: APPEAL BOARD DECISIONS

The Appeal Board makes a decision based solely upon the facts presented in the hearing. The Appeal Board is not required to consider past decisions made in other appeals.

Receiving the Appeal Board's decision

The Appeal Board will discuss the appellant's appeal and make its decision in private. The appellant receives a Notice of Decision letter from the Presiding Officer as soon as possible after the hearing date.

An appeal board may confirm, vary or rescind the executive director's decision or refer the matter back to the executive director for further consideration in accordance with the Appeal Board's direction.

The Appeal Board's decision is final. No further appeals may be made.

CONTACT INFORMATION

If you have any questions about the material presented in this guide, please contact:

Secretary, Apprenticeship and Certification Appeal Board

470- 800 Portage Avenue

Winnipeg, MB R3G 0N4

Email: ApprenticeshipAppeals@gov.mb.ca