

Usual Reconsideration Process (2024-FEB-01)

The information below relates to applications for reconsideration of Tribunal orders or decisions made under the *Employment Standards Act* (“*ESA*”) or the *Temporary Foreign Worker Protection Act* (“*TFWPA*”).

The usual time period for deciding an application for reconsideration is approximately three (3) to four (4) months from the date the Tribunal receives an application to reconsider the Tribunal’s order or decision. However, if the Tribunal seeks submissions on the merits of the application or if other circumstances require extensions of deadlines for submissions the time period for deciding the application may be extended.

This document is not a substitute for, nor does it replace, the requirements of the *ESA*, the *TFWPA*, the *Administrative Tribunals Act*, the *Employment Standards Regulation*, the *Temporary Foreign Worker Protection Regulation*, or the Tribunal’s Rules of Practice and Procedure. You may wish to separately review these documents; they may be accessed through the Tribunal’s website.

This document is not binding on individual Tribunal Members. This document is not meant to provide you with any legal advice.

TRIBUNAL REVIEW OF THE RECONSIDERATION SUBMISSION

On receipt of an application to reconsider a Tribunal decision or order, the Tribunal reviews the submission to establish if it meets the requirements for filing an application for reconsideration and if the submission was filed within the reconsideration periodⁱ.

If the application for reconsideration submission does not fulfill all the requirements, the Tribunal will:

- notify the applicantⁱⁱ that the application for reconsideration submission must be corrected before it will be accepted; and
- set out the time limits for the applicant to correct the application for reconsideration submission and comply with any other directions.

If the applicant fails to deliver the corrected application for reconsideration within the time allowed, the Tribunal may close the file without holding a hearing and without notifying any other party.

ACKNOWLEDGEMENT OF THE APPLICATION FOR RECONSIDERATION

If the application for reconsideration fulfills the requirements for filing, or if the applicant has delivered the corrected application for reconsideration within the time allowed, the Tribunal will send a letter to the applicant, the respondent(s)ⁱⁱⁱ, and to the Director of Employment Standards (“*Director*”).

In the letter, the Tribunal may

- acknowledge that the Tribunal has received the application for reconsideration.
- include a copy of the application for reconsideration submission and any other documents filed with the application.
- request further information from the applicant.
- advise that the application for reconsideration has been assigned to a Panel of the Tribunal for a decision.

ASSIGNMENT TO A PANEL FOR A DECISION

If the Panel determines all or part of the application for reconsideration should be dismissed, the Panel issues a decision.

If all or part of the application for reconsideration is not dismissed, the Tribunal will seek submissions (with a deadline) from the respondent(s) and the Director on the merits of the application. The applicant will be given an opportunity to make a final reply to the submissions, if any.

The Tribunal will disclose the final reply, if any, to the parties and the Panel will decide the application for reconsideration. In a decision^{iv} the Panel may confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.

The Decision is published in print and posted on the Tribunal's website and may be posted in other legal publications.

NEXT STEPS AND FURTHER INFORMATION

The Director or a person served with the Tribunal's reconsideration decision, including the applicant and respondent, may file an application for judicial review of the decision in the BC Supreme Court.

Section 57(1) of the *Administrative Tribunals Act* states: Unless this Act or the tribunal's enabling Act provides otherwise, an application for judicial review of a final decision of the tribunal must be commenced within 60 days of the date the decision is issued.

For information on the judicial review process as well as contact information for the BC Supreme Court, please visit the BC Supreme Court website at www.bccourts.ca/supreme_court/.

The Tribunal is unable to provide information or legal advice on the processes of the BC Supreme Court.

Please contact the Tribunal if you require further information on the Tribunal's processes.

ⁱ See section 116(2) of the *ESA* or see section 72(2) of the *TFWPA*.

ⁱⁱ "applicant" means a person or entity served with the Tribunal's decision or order who files an application for reconsideration with the Tribunal.

ⁱⁱⁱ "respondent" the person or entity replying to the application for reconsideration, or other application.

^{iv} See section 116(1)(b) of the *ESA* or see section 72(1)(b) of the *TFWPA*.