



# Community Care and Assisted Living Appeal Board

## THE EVIDENCE

### Proving your case through witnesses, documents and other evidence

---

#### What is Evidence?

In an oral hearing, each party has the right to present evidence to support their case. Evidence is the material that is presented to the Board to prove or establish the facts that the Board needs to make a proper decision on the appeal. The Board cannot consider any information on an appeal unless it has been presented to the Board by the parties in one of the following ways:

- documents included in the Appeal Record,
- materials submitted to the Board in advance of the hearing and entered as exhibits at the hearing,
- evidence of witnesses presented by affidavit or oral testimony at the hearing, and/or
- documents presented and entered as exhibits at the hearing.

Evidence can include sworn affidavits, letters, photographs, and video or audio tapes that are relevant to the issues on the appeal.

Evidence does not include argument or submissions made by a party in their opening or closing statements for the purpose of persuading or convincing the Board to decide the case in a particular way.

Although extensive rules of evidence have been developed for the courts, those rules do not apply to hearings before the Board. The Board may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law (s.40(1) of the *Administrative Tribunals Act* (ATA)).

The ATA also states that the Board may exclude anything that is unduly repetitious. The Board may also exclude evidence that is of minimal relevance, is unreliable, may confuse the issues or prejudice the other party. Before any evidence is excluded by the Board, the parties are given an opportunity to explain why the evidence they are seeking to introduce is relevant and should not be excluded.

All evidence admitted during the hearing will be assessed by the Board to determine what weight, if any, should be given to the evidence.

#### Witnesses May be Required to Wait Outside

Except for the Appellant and Respondent, the Board may ask the witnesses to wait outside the hearing room until each witness is called to give their evidence. In a hearing by video-conference, witnesses may be required to log out of the video-conference until invited to



## Community Care and Assisted Living Appeal Board

join to give their evidence. This may be done on the Board's own initiative, or at the request of one of the parties.

### **Witness Evidence**

If you are a witness, you will be asked to solemnly promise, affirm or swear to tell the truth. If you have a lawyer or advocate assisting you at the hearing, they will ask you questions to elicit your evidence. If you are unrepresented, you will give your evidence by simply telling the Board your story.

### **Direct Examination**

If you call a witness, they will give their evidence by answering your questions. This is called the **direct examination**. Once a witness has answered your questions, the other party has the right to cross-examine the witness.

If the other party calls a witness, you have the right to cross-examine that witness.

### **Cross Examination**

Cross examination is generally used to support your own case, to weaken the other party's case, or to discredit the witness. You are allowed wide latitude in the types of questions you can ask when cross examining the other party's witnesses. For example, leading questions that suggest the right answer are allowed in cross-examination (but are generally not allowed when you are asking questions of your own witness). An example of a leading question: "When you arrived at the daycare, the baby monitor was turned on in the upstairs bedroom, wasn't it?".

If you disagree with something that the other party's witness said when they were giving their evidence, or you believe that they only told part of the story, cross-examination is your chance to test their answers and ask questions that will get at the whole story, or support your version of the events. However, you cannot simply disagree with a witness, or give your own version of the events, you must try to get the evidence you want by asking specific questions of the witness. Examples of questions you could ask during cross-examination:

- You didn't actually hear the conversation between the parent and the staff member did you?
- You only heard the parent's version of the conversation, correct?
- You didn't ask the staff member who was present what was said, did you? So, you can't really be sure exactly what was said, right?

### **Reply**

After the other party has finished cross-examining your witness, you can question that witness about any new matters that were raised during the cross-examination. If you are



## Community Care and Assisted Living Appeal Board

the witness who was cross-examined, you can give additional evidence about anything new that was brought up in the cross-examination.

### **The Board's Questions**

The Board members hearing the appeal may also ask the witness some questions to make sure they understood the evidence. When the Board is finished asking their questions, the parties will be given a chance to ask any questions that are connected to the Board's questions.

### **Objections**

If a party believes that the Board should not accept certain evidence, or wants to object to a particular question in the hearing, that party may raise an objection. You can object to certain evidence or questioning by interrupting the proceedings and saying, "I object" in a courteous fashion. The Board will ask you why you object. The most common reasons are that the information is not relevant to the case, or that the other party is not actually asking questions of the witness but just making statements or giving their own evidence.

After you have had a chance to say why the information or question should not be allowed, the other party will be asked to explain why it should be allowed. You will be given a chance to respond to what the other party has said.

After listening to what the parties have to say, the Board decide whether to allow the question and/or to accept the evidence.

### **Calling Witnesses From the "Other Side"**

Each party has control over how they present their case and what witnesses they will call to prove their points. If you want to question someone from the other side, for example a specific licensing officer or other licensing staff member, you cannot assume that the other party will call that person as a witness in their own case or have them available for questioning at the hearing. If there is a specific person you want to question at the hearing, you must ask the other party if they will be calling that person as a witness. If not, you should put them on your witness list and call them as a witness in your case. If you think that person is important to your case you may want to call them yourself in any event, as the other side can always decide at the hearing not to call a specific witness who was on their witness list. It is up to each party to arrange for the attendance of the witnesses they want to call. If you are unable to get a person to attend to give evidence in your case voluntarily, you can issue a summons to require their attendance; see Rule 17(1) and the Board's [Summons to a Witness form](#).

### **New Documents as Evidence at the Hearing**

If you want to refer to a document that was not provided to the Board and all other parties prior to the hearing, you must bring enough copies of the document to the



## Community Care and Assisted Living Appeal Board

hearing for each Board member hearing the appeal, all other parties and the official recorder (usually 6 copies). If you do not bring enough copies to the hearing, you must arrange and pay for copies to be made during the hearing.

You must introduce the new documents through a witness who must identify the document. It will then be entered into evidence and marked as an “exhibit” to the hearing.

### **A Final Note**

In your final submissions at the hearing, i.e. your closing argument, you may only refer to evidence that was actually admitted into evidence at the hearing. It is therefore important before you close your case to consider carefully whether you have called all of the witnesses you intended, and have asked that all documents you intend to refer to have been made exhibits. You will not be allowed to add further testimony or documents in your final submission.

In considering what evidence to prepare and present at the hearing, and what questions to ask in cross examination of the other parties’ witnesses, consider what you want to be able to say in final submissions at the end.