# How to File an Employment Insurance Appeal (General Division)





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# 1. Who We Are and What We Do

The Social Security Tribunal of Canada is a quasi-judicial administrative tribunal that is independent of the Department of Employment and Social Development Canada. The Tribunal has the mandate to hear and make decisions on appeals of reconsideration decisions that were made by the Canada Employment Insurance Commission (CEIC).

If you disagree with a CEIC reconsideration decision related to a claim for Employment Insurance benefits, you may appeal this decision to the Tribunal.

The Tribunal's mandate is to offer fair, impartial and efficient appeal processes for Canadians.

The Tribunal consists of a General Division and an Appeal Division. All appeals to the Tribunal must start at the General Division, first level of appeal. Where a party believes the General Division decision contains an error, the party may file an appeal at the second level of appeal, the Appeal Division. All decisions are made by a single member.

The Tribunal understands that the appeal process may seem long and that waiting for a decision can be difficult. However, the Tribunal must follow the laws and regulations to render quality decisions in a timely manner.

# 1.1. Who can appeal

You can appeal a CEIC reconsideration decision if you are:

- an Employment Insurance claimant or other person who is the subject of a CEIC reconsideration decision; or
- the employer of a claimant.

# 2. Employment Insurance Appeal **Process at the General Division**

# 2.1. Before appealing

Before you can file an appeal with the Tribunal, you must complete the reconsideration process of the Canada Employment Insurance Commission (CEIC).

If the CEIC makes a decision under the *Employment Insurance Act* that you do not agree with, you must first ask the CEIC to reconsider its decision. The CEIC will go through a reconsideration process and decide whether to change or keep the original decision, and will send you a reconsideration decision. If you disagree with the reconsideration decision, you may then appeal that decision to the Tribunal.

#### 1) You apply for Employment Insurance.

2) The CEIC responds to your application and says you do not qualify for Employment Insurance because you lost your job due to misconduct. You do not agree.

- **Example** 3) You ask the CEIC to reconsider its decision. The CEIC goes through the reconsideration process and sends you a letter saying it is not changing its original decision.
  - 4) You disagree with the CEIC reconsideration decision. Now, you may appeal to the Tribunal's General Division by following the instructions below.

# 2.2. When to appeal

The Tribunal must receive your appeal within 30 days after the day that the CEIC reconsideration decision is communicated to you, by letter or by telephone.

To make sure you don't miss the deadline, start counting days on the day immediately following the day the CEIC reconsideration decision is communicated to you (holidays and weekends are included in the 30 days).

## **Example**

If you received the CEIC reconsideration decision on September 3, then September 4 is day 1. This means that the Tribunal must receive your appeal no later than October 3.

If October 3 falls on a Saturday or Sunday, the Tribunal must receive your appeal no later than the following Monday.



# 2.3. How to appeal and related information

# How to appeal

To file an appeal, please complete the Notice of Appeal – Employment Insurance – General Division form. If you cannot access the Notice of Appeal form online, please contact the Tribunal and it will send you a form. See section 8 for contact information.

Make sure to include all the required information, and to attach the reconsideration decision from the CEIC when submitting your Notice of Appeal – Employment Insurance – General Division form. You cannot appeal to the Tribunal until you have your CEIC reconsideration decision. If you have misplaced your CEIC reconsideration decision, call or visit a Service Canada office. To find the Service Canada office nearest you, go to www.canada.ca or call 1-800-622-6232.

# Reasons to appeal

The Tribunal needs to understand why you believe the CEIC reconsideration decision is wrong. In your Notice of Appeal form, please explain the reasons for your appeal.

In your explanation, you should address:

- Why you think the CEIC decision is wrong
- How you can prove to the Tribunal that you should receive the benefit you were denied
- If you have documents that could support your argument and, if so, provide them to the Tribunal

The Tribunal member needs to fully understand the reason(s) for your appeal because they will use your information, as well as the information from the other parties, to make a decision. Leaving out important or relevant information can impact the outcome of your appeal.

### Late appeals

If you file your appeal after the 30-day deadline, your appeal may not be accepted. You will need to explain why your appeal is late on your Notice of Appeal form.

A Tribunal member will decide whether to allow your appeal to move forward based on your written explanation. You may include documents that support your explanation, such as a copy of a doctor's report. You should explain:

- The reason your appeal is late
- The arguments you have to support your appeal and show that it has a chance of success
- The steps you took that show that you were always planning to appeal
- Why allowing the late appeal would not be unfair to the other party

A Tribunal member cannot allow your appeal to proceed if more than 12 months have passed since the CEIC reconsideration decision was communicated to you.

If the Tribunal member refuses to allow your appeal to move forward because it was late, the General Division will close your appeal file. You may appeal this decision to the Tribunal's Appeal Division by submitting an Application to the Appeal Division – Employment Insurance form within **30 days**. Please find this form at http://www1.canada.ca/en/sst/ forms.html, or contact the Tribunal to obtain a copy.

### Where to submit an appeal

You may mail, email or fax your appeal documents to the Tribunal. See section 8 of this document for contact information.

### Added party

If the Tribunal member decides that another person has a direct interest in the decision that will result from the appeal, the Tribunal member may add this person as a party to the appeal.

The Tribunal member may add a party to an appeal either on their own initiative or further to a person requesting to be added as a party to an appeal.

The CEIC made a reconsideration decision finding that an employee was not entitled to benefits because there was a labour dispute at the employee's work **Example** place. The employee then appeals the reconsideration decision to the Tribunal. The Tribunal may send the employer a letter informing them that an appeal has been filed and that they can request to be added as a party.

When the Tribunal member adds a party to the appeal, the added party will receive copies of all documents filed by the other parties in the appeal. An added party has the right to submit written submissions and documents to the Tribunal and to participate in a hearing.

The Tribunal also sends the decision to the added party.

### How to request to be added as a party

To request to be added as a party, please send a written request to the Tribunal along with the following information:

- Your contact information
  - First and last name (if an employer or business, the business name and the name of a contact person)
  - Address
  - Telephone number
  - Fax number (if you have one)
  - Email address (if you have one)
- The reasons you have a direct interest in the decision
- Your signature on your request to be an added party
- If you have a representative, their name and contact information (address, telephone number, and, if they have one, a fax number and email address).
- Both your and your representative's (if you have one) signature, to show that you both agree with representation

The Tribunal member will review the request and decide if the person has a direct interest in the decision that will result from the appeal. All parties will be notified of the Tribunal member's decision to add a party to the appeal. If the Tribunal member refuses the added party request, this decision may be appealed to the Appeal Division.

# **Summary dismissals**

The law requires that Tribunal members decide, based on the information in the file, if the appeal has a reasonable chance of success. If the Tribunal member determines that there is no reasonable chance of success, the Tribunal member will then begin the summary dismissal process.

The Tribunal will send you a letter to let you know of the Tribunal member's intention to summarily dismiss your appeal. You will have the opportunity to explain why your appeal should not be summarily dismissed. The Tribunal member will review any information that you submit.

The Tribunal member will decide whether to:

- a) summarily dismiss the appeal (with this decision, there is no hearing); or
- b) continue the appeal process and decide on the type of hearing.

If your appeal is summarily dismissed, you can appeal to the Appeal Division.

#### Example

You disagree with the CEIC reconsideration decision denying you benefits. You believe that because you have paid into the EI program for years, it is only fair for you to get EI now that you are out of work. However, the law requires a specific number of insurable hours to qualify for EI and you do not have the required hours. If you do not have the specific number of insurable hours, the Tribunal member may decide to summarily dismiss your appeal because he or she must apply the law as it is written. In such a case, the summary dismissal process would begin.

#### **Documents**

#### **Documents to submit with your Notice of Appeal**

You are strongly encouraged to file all of the documents that you are relying on to support your appeal when you file your Notice of Appeal – Employment Insurance – General Division form. Supporting documents could include things such as:

- · Pay stubs
- Record(s) of Employment
- Collective agreement
- Employment contract
- Medical report
- Specialist's report
- Bank statements
- Proof of residence
- Other court or tribunal decisions or settlement agreements

If, after you submit your Notice of Appeal and supporting documents, you find other documents that you feel might support your appeal, you may submit this additional information to the Tribunal. The Tribunal will provide copies to the other parties.

If you do not send your supporting documents to the Tribunal as soon as possible, your appeal may be delayed. Please note that the Tribunal member will decide whether or not to accept documents presented at or after a hearing.

Only send copies to the Tribunal. Keep all originals.

All documents submitted to the Tribunal must be in English or French. Any documents sent to the Tribunal in a language other than English or French will not be accepted. They will be returned to the party who submitted the documents.

Documents in a language other than English or French must be translated into English or French. The party who wishes to file the document is responsible for the translation.

### **Sharing of documents**

The Tribunal will send all parties copies of all documents filed by other parties (such as the CEIC, or an added party). This ensures that all parties, and the Tribunal member, have the same information.

# 2.4. Key steps in an appeal

- To start an appeal, please complete the Notice of Appeal Employment Insurance Step 1 General Division form and submit it to the Tribunal, along with the CEIC reconsideration decision.
- The Tribunal will send you a letter to confirm it received your appeal. If your appeal is missing information, the Tribunal will ask you to provide it. The appeal process will not start until the Tribunal receives all missing information. If your appeal appears to be late, the Tribunal will inform you of this. The appeal process will not start until a Tribunal member decides if your appeal can move forward.
- The Tribunal will contact the CEIC to inform it of your appeal and ask for a copy of Step 3 all documents relating to your file. The Tribunal will also ask the CEIC for its submissions on your appeal. The Tribunal expects to receive the documents and submissions from the CEIC within 7 business days from the request.
- **Step 4** Your appeal will be assigned to a Tribunal member.
- Step 5 The Tribunal member will consider if another person, which could include an employer, has a direct interest in the decision that will result from the appeal. For more information, go to the Added Party section.
- The law requires the Tribunal member to decide if the appeal should be dismissed on a summary basis (without holding a hearing). The Tribunal member will summarily dismiss an appeal if he or she finds that the appeal has no reasonable

If an appeal is not summarily dismissed, the Tribunal member will decide what type of hearing will be held. You and your representative (if you have one) will receive a Notice of Hearing to inform you of the type of hearing and the time, date and location of the hearing. The Tribunal member may hold a hearing:

- by teleconference;
  by videoconference;
  in-person; or
  by written questions and answers.

NOTE: The Tribunal will provide all parties to the appeal with a copy of the documents

it receives from each party. This means that, for example, any documents you file will be shared with the CEIC and any documents the CEIC files will be shared with you.

After the hearing, the Tribunal member will make a decision on your appeal. The **Step 8** Tribunal will send you this decision in writing. The Tribunal has service standards that identify the timelines in which you can expect your decision to be issued.

If you disagree with the decision of the General Division, you may appeal to the Step 9 Appeal Division. Please see the How to File an Employment Insurance Appeal (Appeal Division) brochure or visit http://www1.canada.ca/en/sst/index.html or call 1-877-227-8577 to get a copy.

# 2.5. Hearings

Hearings are open to the public. However, all or part of a hearing may be held in private if the Tribunal member finds it necessary based on the circumstances of the case. A party may ask the Tribunal member to hold all or part of a hearing in private. This request must be made at the beginning of the hearing.

### **Types**

The Tribunal may hold a hearing:

- by teleconference;
- by videoconference;
- in-person; or
- by written questions and answers

The Tribunal member will decide what type of hearing will be held.



# Teleconference hearings

A teleconference hearing takes place by telephone.

A Notice of Hearing will be sent to you and your representative (if you have one). The Notice of Hearing will advise you of the date and time for the teleconference hearing and will include the teleconference number you will have to call. You are responsible for calling the number provided in the Notice of Hearing.

If you have a witness, or witnesses, you must ensure that they are able to call the teleconference number at the scheduled date and time.

Plan to dial-in 10 minutes before the time set for the teleconference hearing. Normally, teleconference hearings do not last longer than 1 hour.

The Tribunal makes an audio recording of every teleconference hearing. Parties may contact the Tribunal to ask for a copy of the recording.



# Videoconference hearings

A hearing by videoconference takes place using videoconference equipment so that the participants can hear and see one another from different locations. For example, the parties may be in one location and the Tribunal member in another.

A Notice of Hearing will be sent to you and your representative (if you have one). The Notice of Hearing will advise you of the date, time and location of the videoconference hearing.

The Tribunal will normally schedule the videoconference at a location nearest to the address you have provided to the Tribunal. This will usually be at a local Service Canada office.

If you have a witness, or witnesses, you must ensure that they are available to attend the videoconference hearing at the scheduled date, time and location.

Plan to arrive 30 minutes before the time set for the videoconference hearing. Normally, videoconference hearings do not last longer than 1 hour.

The Tribunal makes an audio recording of every videoconference hearing. Parties may contact the Tribunal to ask for a copy of the recording.

# ln-person hearings

For an in-person hearing, all parties and the Tribunal member attend the hearing in the same location.

A Notice of Hearing will be sent to you and your representative (if you have one). The Notice of Hearing will advise parties of the date, time and location of the in person hearing.

The Tribunal will normally schedule the in-person hearing at a location nearest to the address you have provided with your appeal. This will usually be at a local Service Canada office.

If you have a witness, or witnesses, you must ensure that they are available to attend the in-person hearing at the scheduled date, time and location.

Plan to arrive 30 minutes before the time set for the in-person hearing.

The Tribunal makes an audio recording of every in person hearing. Parties may contact the Tribunal to ask for a copy of the recording

# Mritten guestions and answers hearings

Hearings by way of written questions and answers are conducted without the parties present. The Tribunal member will ask questions, in writing, of one or more of the parties and the parties will

have to provide their answers in writing.

The Notice of Hearing will set out the questions, who must answer them, and the date by which the Tribunal must receive the answers. The Tribunal must receive the answers to the questions by the deadline identified in the Notice of Hearing.

The Tribunal will send the answers received from each party to all the other parties, with a deadline for any additional input. The Tribunal member may also ask follow-up questions.

After the deadlines have passed, the Tribunal member will decide the appeal based on the information in the appeal file.

### How to prepare for a hearing

- 1) When preparing for your hearing, you should consider what will help the Tribunal member understand the reasons for your appeal and whether there is anyone who has information that could assist you at the hearing (a witness).
- 2) If there are documents that you have not yet submitted to the Tribunal, submit these documents as soon as possible.
- 3) Please read the CEIC reconsideration decision again and review all the material that the Tribunal has sent to you.
- 4) You may want to consult previous Social Security Tribunal decisions and the laws and regulations, available on the Tribunal's website.
- 5) Consider addressing questions such as: With what do you disagree? Why do you believe you are eligible for the benefit you were denied?
- 6) All Social Security Tribunal hearings are held in either English or French. If you have limited English or French skills, contact the Tribunal as soon as you receive your Notice of Hearing and the Tribunal will provide you with an interpreter at no cost to you.
- 7) Organize your paperwork and bring all your documents with you to the hearing. Please be sure to bring the complete and page-numbered record provided to you by the Tribunal.
- 8) Arrive sufficiently in advance of the start time of the hearing.

### How to request a change in hearing date

#### Within 2 days of receipt of the Notice of Hearing

You can request a change of hearing date by contacting the Tribunal by telephone within 2 business days of receiving your Notice of Hearing. Tribunal staff will set a new hearing date that takes your availability into account. This is an administrative change that is available usually only once to each party.

# Beyond 2 days of receipt of the Notice of Hearing

If more than 2 business days have passed since you received your Notice of Hearing, or if you have already received an administrative change and you want to change the hearing date, you must request an **adjournment**.

#### Requesting an adjournment

An adjournment request to the Tribunal must be in writing (letter, email or fax) and must explain why you cannot attend the hearing on the date and time set out in the Notice of Hearing. The Tribunal member will decide whether or not to grant the adjournment request. Please see our Contact Us section at the end of this document.

If the Tribunal member grants your request, the Tribunal will set a new hearing date that takes your availability into account. If the request is refused, the hearing will proceed as scheduled.

If the Tribunal member agrees to your request for an adjournment, the Tribunal member will not grant you a second adjournment request unless there are exceptional circumstances.

Unless you receive notice from the Tribunal that your hearing date has been changed, the hearing will go ahead on the date and time identified in the Notice of Hearing.

### **Hearing structure**

The Tribunal member presides over the hearing.

The time required for a hearing varies depending on the number of witnesses and the complexity of the issues in the appeal. Most Employment Insurance hearings last about 1 hour.

A Tribunal hearing (other than a written question and answer hearing) follows a set structure:

#### Start of the hearing

At the start of a hearing, the Tribunal member will offer opening remarks and explain how the hearing will be conducted.

#### **Evidence**

Everyone who will testify as a witness at the hearing must make a solemn affirmation to tell the truth.

Every party will have a chance to present their case, including having a witness testify. Generally, the evidence portion of the hearing begins with the appellant offering his or her point of view and responding to the Tribunal member's questions; followed by any appellant witness(es). If the CEIC attends, the CEIC follows the appellant (or the appellant's witnesses, if applicable), then any additional parties.

Everyone who is a witness at a hearing may be asked questions by the Tribunal member and by any other party to the appeal.

The Tribunal member will tell parties and witnesses when it is their turn to speak.

Before the end of the hearing, each party will get one last chance to state why they believe the Tribunal member should decide in their favour and make factual or legal arguments if they wish.

#### Conclusion and decision

The hearing generally concludes with closing remarks from the Tribunal member. The Tribunal member will then decide the matter and write their decision.

The Tribunal will send the decision by mail to you and your representative, if you have one. The Tribunal strives to issue decisions as soon as possible after the hearing, and in accordance with the Tribunal's service standards.

#### 2.6. Decisions

The Tribunal will send the decision by mail to you and your representative, if you have one.

Members strive to meet the Tribunal's service standards and issue timely decisions. Exceptional cases, such as group appeals, Charter cases, late appeals, cases in abeyance, or those with added parties, will generally take more time to process. Another reason for the Tribunal not to meet the proposed standards would be where requests for extension of time are granted to ensure that natural justice is respected. In addition, there are several factors beyond the Tribunal's control that may prevent it from adhering to the service standards, such as a surge in the volume of cases, the complexity of cases and the availability of members.

The Tribunal publishes, on its website, a selection of relevant decisions from the General Division. However, the name of the claimant and those of personal acquaintances (when applicable) are replaced by initials and personal information, such as date of birth, address and social insurance numbers, is replaced with an X.

# After receipt of the General Division decision

If you disagree with the decision made by the General Division, you can appeal to the second level of appeal at the Tribunal, the Appeal Division.

In limited circumstances, parties may also be able to submit an application to rescind or amend. Please see the How to File an Employment Insurance Appeal (Appeal Division) brochure or visit <a href="http://www1.canada.ca/en/sst/index.html">http://www1.canada.ca/en/sst/index.html</a> for more information or call 1-877-227-8577 to get a copy.

# 3. Representatives

Parties to an appeal can represent themselves before the Tribunal.

Parties also have the right to name a representative (such as a friend, family member, lawyer or other professional) at any time during the appeal. To do so, parties must complete and sign the Appointment of a Representative and Authorization to Disclose form. This form gives the representative permission to act on the party's behalf. Once a representative is named, the Tribunal will communicate and share information with the representative. It is the representative's responsibility to share all information related to the appeal with the party who has engaged the representative. Whether represented or not, all parties will receive the Notice of Hearing and the Tribunal's decision directly from the Tribunal.

If a party decides to change their representative or to no longer use a representative, the party must complete and send a revised Appointment of a Representative and Authorization to Disclose form to the Tribunal as soon as possible.

Parties are responsible for all costs related to representation.

Some parties may qualify for Legal Aid services or for a free consultation with a lawyer. Local or national organizations may also advise parties. The Tribunal cannot provide any legal advice or recommend a representative.

# 3.1. Role of a representative

A representative can help throughout the appeal by preparing or obtaining documentation in support of the appeal, preparing the Notice of Appeal, questioning witnesses at the hearing and making submissions. A representative may:

- represent a party for the entire appeal, including the hearing;
- help a party until the hearing and the party attends the hearing alone; or
- represent a party at the hearing whereas it is the party who has managed the appeal until then.

A witness is a person who provides evidence to the Tribunal. A representative is not normally a witness.

# 4. Costs

There is no fee to file an appeal with the Tribunal. However, parties may have to cover some or all of the following:

- Photocopying
- Sending documents to the Tribunal by Canada Post or a courier service
- Paying a health professional to write a report on your behalf (if you so choose)
- Hiring a representative to appear on your behalf
- Translating documents from another language into either English or French
- Taking time off work to participate in your hearing
- Paying the expenses of your witness(es) to participate in the hearing (if required)
- Travelling to the hearing (if an in-person or videoconference hearing is selected)

Note that subsection 63 (1) of the *Department of Employment and Social Development Act* reads:

"Any party who is required to attend a hearing may, if the Chairperson in any particular case for special reasons considers it warranted, be reimbursed for their travel or living expenses up to the amounts determined by the Chief Administrator of the Administrative Tribunals Support Service of Canada, or be paid any allowance, including compensation for lost remuneration, in accordance with the rates fixed by that Chief Administrator."

# 5. Interpreters and translation

Parties have the right to communicate with the Tribunal in either of Canada's official languages: English or French.

# 5.1. Interpreters

For hearings heard in-person, videoconference or teleconference, the Tribunal will provide interpretation services for persons who cannot communicate effectively in English or French. In such cases, the Tribunal will provide and pay for an interpreter. An interpreter will translate questions and answers, and anything else that is said at the hearing. Please note that an interpreter cannot represent a party.

If a party needs an interpreter for the hearing, contact the Tribunal as soon as possible.

#### 5.2. Translation of documents

All documents submitted to the Tribunal must be in English or French. Any documents sent to the Tribunal in a language other than English or French will not be accepted. They will be returned to the party who submitted the documents.

Documents in a language other than English or French must be translated into English or French. The translation is the responsibility of the party who wishes to file the document.

All translations must include the translator's contact information (address, telephone number and email address) and a signed and dated declaration from the translator that the translation is complete and accurate. The Tribunal must be provided with both the document in its original language and the translated version.

Parties are responsible for these translation costs to English or French. The Tribunal may verify the translation to ensure that it is accurate.

# 6. Service Standards

The Tribunal is constantly striving to provide Canadians with efficient and high quality services. To that end, the Tribunal has set service standards for each section and division, and is making every possible effort to meet them.

These service standards were developed in 2015, based on a series of assumptions, an analysis of the Tribunal's capacity, in terms of both members and staff, the specific caseload volumes in each Section/Division, the evolving state of our operational systems, the current legislation and regulations, reasonable expectations of parties and experience to date. These service standards may be revised from time to time as circumstances change.

The Tribunal's service standards apply to general caseloads. Exceptional cases, such as group appeals, constitutional cases, late appeals, cases in abeyance, or those with added parties, will generally take more time to process.

There are several other factors beyond the Tribunal's control that may prevent it from adhering to its service standards, such as a surge in the volume of cases, the complexity of cases, the availability of members and their capacity to meet performance expectations. In addition, the Tribunal may not meet the service standards if parties request, and are granted, adjournments or an extension of time.

For the General Division – Employment Insurance section, the following service standard will be in effect for all new cases received as of September 1, 2015:

85% of final decisions will be made within 90 days of the appeal being filed.

# 7. Other Tools Available

When preparing for your hearing, we invite you to consult the following tools also available on our website:

- Employment Insurance reference tool https://www1.canada.ca/en/sst/rdl/refei.html
- Organizations that can help https://www1.canada.ca/en/sst/organizations.html
- Laws, regulations and practice directions https://www1.canada.ca/en/sst/legislation.html
- Code of Conduct for Members https://www1.canada.ca/en/sst/rdl/memcodcon.html

# 8. Contact Us

The Tribunal provides service in English and French. The fastest way to send the Tribunal information is by email.

#### 8.1. To reach the Tribunal

#### **Mailing address**



Social Security Tribunal of Canada PO Box 9812 Station T Ottawa, ON K1G 6S3



#### **Email**

info.sst-tss@canada.gc.ca



#### **Telephone**

From 7:00 a.m. to 7:00 p.m. Eastern Time - Monday to Friday: 1-877-227-8577 (toll-free in Canada and the United States) 613-437-1640 (from outside Canada and the United States, call collect)



#### **Fax**

1-855-814-4117 (toll-free in Canada) 1-613-941-5121 (long distance charges may apply)



#### TTY

For those who are deaf or hard of hearing 1-866-873-8381 (toll-free in Canada and the United States) 1-613-948-8181 (from outside Canada and the United States, call collect)

#### 8.2. Mail from the Tribunal

The Tribunal will mail you important information about your appeal, such as hearing date, deadlines and decisions. It is in your best interest to open and respond to any letter from the Tribunal as soon as possible.

It is important to notify the Tribunal of any change to your contact information. You can update your mailing address and/or telephone number quickly and easily by contacting the Tribunal through any of the communication methods listed above.