



APPEALING A CONSENT AND CAPACITY BOARD DECISION

Disclaimer: The following is intended for use as general information and is prepared for purposes of convenience only. It is not to be relied upon as legal advice or legal authority. If you have inquiries as to legal proceedings, or if you would like more detailed information regarding legislation, you should consult a lawyer.

Appealing a Consent and Capacity Board decision is very complex! You will have to complete many legal documents and make legal arguments. It is strongly recommended that you talk to and retain a lawyer.

The PPAO does not provide legal advice or representation.

General

- You may appeal a decision by the Consent and Capacity Board (CCB) if you believe the CCB has made a mistake in fact or in law.
- The appeal is made to the Ontario Superior Court of Justice.
- You must file the appeal within 7 days of receiving the CCB's decision. If the appeal is filed after 7 days, you must ask the court for special permission to proceed.
- Your Patient Advocate can try to help you to find legal counsel to talk about and/or assist you with the appeal.

What do I need to appeal?

- If you do not have a lawyer to help you, you can ask your Patient Advocate for assistance with completing the paperwork. The following documents are required to appeal a decision of the CCB.
 - The CCB decision - the CCB will provide you with a copy.
 - Notice of Appeal (Form 62A).
 - Appellant's Certificate of Evidence (Form 61C).
 - Affidavit of Service (Form 16B).
- The Notice of Appeal, Appellant's Certificate of Evidence and Affidavit of Service are not pre-printed but the required format can be copied from the Rules of Civil Procedure. You can find the forms on-line at:

www.ontariocourtforms.on.ca/forms/civil/62a/RCP_E_62A_1105.htm,
www.ontariocourtforms.on.ca/forms/civil/61c/RCP_E_61C_1105.htm and
www.ontariocourtforms.on.ca/forms/civil/16b/RCP_E_16B_0108.pdf.

How do I complete the Notice of Appeal?

- Use the CCB decision as your reference to complete the Notice of Appeal. Specify the date and location of hearing. Explain why you disagree with the decision, and what you want the court to do for you.
- If you file the Notice of Appeal with the court more than 7 days after you received the CCB's decision, you must also explain why you are late and why you should receive an extension of time.

How do I complete the Appellant's Certificate of Evidence?

- You are required to set out all the evidence that is necessary for the appeal. Most people request that all of the exhibits (that is, the documents given to the CCB for the hearing) and transcripts (that is, typed notes of what was said at the hearing) from the CCB hearing be admitted as evidence.

How do I serve the Notice of Appeal and the Appellant's Certificate of Evidence?

- A copy of the Notice of Appeal and Appellant's Certificate of Evidence must be given to all the other parties at the CCB hearing (e.g. your doctor) and to the CCB.
- Usually, copies of these documents should be given directly to each party. But, it may be possible to send these documents by mail or fax. It is best to check with the parties first.
- Copies should also be given directly to the court. Again, it may be possible to send them by mail or fax. Check with the court clerk at your local courthouse. For a complete listing of all the courthouses in Ontario, you can call (416) 326-2220 or 1-800-518-7901 or visit this website – www.attorneygeneral.jus.gov.on.ca/english/courts/cadaddr.asp.
- The Notice of Appeal and Appellant's Certificate of Evidence can be faxed to the CCB.
- You must complete an Affidavit of Service that confirms that you have served the parties and the CCB with these documents. A copy of the Affidavit of Service goes to the court but not the parties.
- A commissioner for taking affidavits must witness you signing the Affidavit of Service. Lawyers and certain government officials are commissioners.

How do I file the necessary documents?

- The Notice of Appeal, Appellant's Certificate of Evidence and Affidavit of Service must be filed at the Superior Court of Justice within 7 days of receiving a decision from the CCB.

- While it is common practice to file the documents at the courthouse closest to the city where you live or are hospitalized, there is nothing preventing you from filing elsewhere.
- Usually, the documents must be given directly (in person) to a clerk at the court. If you are unable to do so, you may be able to make special arrangements with the court to mail, fax or courier the documents. You should check with the court clerk well in advance of filing.
- There is no fee to file these documents.

What are my next steps?

- After the Notice of Appeal and Appellant's Certificate of Evidence is served on the CCB, the Record of Proceedings will be sent to you by the CCB. The Record of Proceedings is made up of the hearing exhibits, the decision, the reasons for decision and the transcript from your hearing.
- Within 14 days of receiving these materials, you must file a factum with the court, along with proof of service. A factum is a legal document that explains both the facts and the law about your dispute.
- The other parties (e.g., the doctor) will then have 14 days to prepare and file their own factum.
- After the court receives all the required materials, a date will be set for the case to be argued in court. This can sometimes take several months. You will be notified of the time and location. You must make arrangements to attend.

What happens at the court hearing?

- At the hearing, each party has a chance to make oral arguments. The doctor will try to convince the court that the decision of the CCB was correct while you will explain why the CCB's decision was wrong. It is to your advantage to have a lawyer represent you at court.
- There are no witnesses at the hearing.
- Generally, no new evidence is allowed to be presented to the court.

What if I decide not to continue the appeal?

- If you wish to discontinue or abandon your appeal, a Notice of Abandonment (Form 61K) must be filed with the court. The required format can be found at www.ontariocourtforms.on.ca/english/civil.

Questions?

- You may contact your local Patient Advocate or call the PPAO Central Office for information at 1-800-578-2343.
- If you have questions regarding the appeal, call the court clerk in your area. Phone numbers are indicated below.

Superior Court of Justice – Contact Information**Brockville**

41 Court House Square
Brockville, ON K6V 7N3
(613) 345-5895

Hamilton

John Sopinka Court House
45 Main Street East
Hamilton, ON L8N 2B7
(905) 645-5252

Kingston

Frontenac County Courthouse
5 Court Street
Kingston, ON K7L 2N4
(613) 548-6811

London

80 Dundas Street
London, ON N6A 6A3
(519) 660-3000

North Bay

360 Plouffe Street
North Bay, ON P1B 9L5
(705) 495-8309

St. Thomas

Justice Building
145 Curtis Street
P.O. Box 310 Station Main
St. Thomas, ON N5P 3T9
(519) 633-1720

Thunder Bay

277 Camelot Street
Thunder Bay, ON P7A 4B3
(807) 343-2700

Toronto

393 University Avenue, 10th Floor
Toronto, ON M5G 1E6
(416) 327-5440

Whitby

601 Rossland Road East
Whitby, ON L1N 9G7
(905) 430-5800

Windsor

245 Windsor Avenue
Windsor, ON N9A 1J2
(519) 973-6620

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