



Case Appraisal Process Model

Description

Case Appraisal is understood by the Tribunal as:

An advisory process in which a Tribunal member, officer of the Tribunal or another person appointed by the Tribunal, chosen on the basis of their knowledge of the subject matter, *assists the parties to resolve the dispute* by providing a non-binding opinion on the facts and the likely outcomes. The opinion is an assessment of facts in dispute. The opinion may be the subject of a written report which may be admissible at the hearing.

Case Appraisal Process

Case Appraisal may be undertaken at any time in the Tribunal process. Case Appraisal is a process of assessing the facts in a case and by that process assisting the parties to resolve the dispute.

The Case Appraisal process is undertaken in confidence and without prejudice to the parties. Case Appraisal will usually be conducted in the presence of the parties, following the receipt of oral or written submissions, but may be conducted on the papers alone. The appraiser will determine the method of appraisal in consultation with the parties. Where the appraisal is conducted in the presence of the parties, the Applicant and the Respondent are expected to attend in person. Representatives may play an active role in the process, with a focus on the outcome of the issues to be determined and consequently the parties' prospects of success.

The case appraiser reviews and analyses factual information provided by the parties, listens to the parties' submissions and provides a non-binding opinion. An oral opinion will usually be given on the same day after a brief adjournment. In more complex matters, the appraiser may issue a written opinion within 48 hours of the Appraisal.

1. PREPARATION AND REFERRAL

Referral to Case Appraisal will usually take place following a conference in which the conference convenor may make directions for the provision and exchange of documents in preparation for the Appraisal. The conference convenor, in consultation with the parties, may prepare a list of suggested factual issues in dispute or questions for determination in the Appraisal. A date for the Appraisal will be set at the conference or shortly after.

The parties are encouraged to discuss with each other and the appraiser whether they may want the appraisal process to include the possibility of settlement discussions instead of, or in addition to, a formal evaluation.

2. APPRAISERS OPENING STATEMENT

The appraiser will explain the process and his/her role to the parties and/or their representatives.

The appraiser will focus primarily on the facts of the case.

3. IDENTIFICATION AND LISTING OF ISSUES

At the commencement of the Case Appraisal process, the appraiser may seek endorsement from the parties as to the agreed list of factual issues and/or questions for determination and make any appropriate changes.

The parties are encouraged to prioritise issues for discussion from the agreed list of factual issues in dispute. The appraiser may facilitate negotiations between the parties and may hold private meetings in order to explore options with either party prior to the giving of an opinion.

4. PARTIES PRESENTATIONS

The parties present their cases on the agreed issues either by written submissions, by oral presentation, or by a combination of both. The appraiser manages the length of any oral presentations. The appraisal process will be informal; rules of evidence will not apply and there will be no formal examination or cross-examination of parties. The appraiser considers the facts presented by both parties. The appraiser may ask questions and will summarise the presentations made by the parties. The parties are encouraged to ask clarifying questions of each other.

5. APPRAISER'S ORAL OPINION

At the conclusion of the Appraisal the appraiser will offer the parties a non-binding oral opinion on the factual issues in dispute, based on an objective, independent and impartial analysis of the factual information and materials available at the time of the Appraisal. This opinion may include advice as to the possible or probable outcomes.

The purpose of the non-binding opinion is to provide the parties with an objective basis for further negotiation. The appraiser's non-binding opinion will indicate how the key disputed issues between the parties may be resolved and to then suggest options to the parties for negotiation and compromise.

The parties should be in a position to re-assess their risks regarding the final outcome of the dispute and that risk re-assessment will provide the parties with an objective basis for proceeding with further negotiations.

6. CONCLUDING JOINT SESSION

The appraiser will usually facilitate settlement negotiations following the giving of the opinion. Where an opinion has been given on the papers, a face-to-face or telephone session will be convened within 7 days to discuss possible settlement options or to prepare the matter for hearing. Where possible, this will be conducted by the appraiser.

Where agreement between the parties is reached and the matter is settled, the appraiser must ensure that the terms of settlement are in accordance with the law, before making a consent decision.

If settlement is not reached, the appraiser may record a plan or make directions to identify and exchange further relevant information which may assist in achieving resolution through the use of some other ADR process or to progress the matter to a hearing.

The fact that a Case Appraisal has occurred will be reported to the Tribunal hearing the application. However, the details of the Appraisal will not be reported unless all parties consent.

7. APPRAISER'S WRITTEN OPINION

If the matter has not resolved by negotiation, the appraiser may, at the request of a party, give a written opinion about the factual issues in dispute. The report will only be a summary of the likely outcome at a hearing of the factual issues in dispute based on the evidence available at the time of the Case Appraisal. The opinion may be admitted in evidence at the Tribunal hearing unless a party objects to the admission of the opinion.

As in all ADR processes, the parties involved in a Case Appraisal must act in good faith (section 34A).