

Under section 31 of the Labour Tribunal Ordinance ("LTO"), Cap. 25, Laws of Hong Kong, a presiding officer may, of his own motion within 14 days from the date of an award or order made by him, or on the application of a party within 7 days, review the award or order and on such review may re-open and re-hear the claim wholly or in part and may call or hear fresh evidence and may confirm, vary or reverse his previous award or order.

If any party is dissatisfied with an award or order, he may make an application in Form 13 for review. An application for review of the judgment must be filed within 7 days from the date of the award.

Under section 32 of the LTO, if a party is dissatisfied with an award, order or determination by the Labour Tribunal on the grounds that the award, order or determination is -

- (a) erroneous in point of law; or
- (b) outside the jurisdiction of the tribunal,

such party may, within 7 days after the date on which the award, order or determination was served on him, or within such extended time as may be allowed by the Registrar of the High Court on good cause, apply to the Court of First Instance for leave to appeal and the Court of First Instance may grant such leave.

A party applying for leave to appeal has to set out the grounds of appeal and the reasons in support of such grounds in Form 14 - "Application for Leave to Appeal on Point of Law". This Form can be obtained from the registry of the Labour Tribunal¹ or the Clerk of Court's Office of the High Court². The grounds for appeal must relate to points of law or the jurisdiction of the tribunal. The appellant may be represented by lawyers in the application³.

An application for leave to appeal has to be lodged with the Registrar of the High Court and should be filed at the Clerk of Court's Office of the High Court. A prescribed fee of \$45 is payable upon filing of the application. After an application for leave to appeal is filed, the Registrar of the High Court will fix a date for hearing. Only the appellant is required

to attend the hearing for leave to appeal, which will be heard by a High Court judge. The presiding officer will submit a written judgment of the claim to the High Court at least 7 days before the hearing for leave to appeal. The Labour Tribunal will provide a copy of the judgment to the appellant free of charge.

If leave to appeal is granted, the Labour Tribunal will provide the respondent with a copy of the written judgment by the presiding officer free of charge. After the appellant has paid a fee of \$1,045 to file the Notice of Originating Motion, the appellant should proceed to list the hearing of the appeal. Both the appellant and the respondent will be required to attend the hearing and make their submissions. Both parties may be represented by lawyers⁴.

On appeal, the Court of First Instance may -

- (a) allow the appeal;
- (b) dismiss the appeal; or
- (c) remit the matter to the tribunal with such directions as it thinks fit, which may include a direction to the tribunal for a new hearing.

But may not -

- (a) reverse or vary any determination made by the tribunal on questions of fact; or
- (b) receive further evidence.

An application for review or leave to appeal shall not operate as a stay of execution of an award or order. This means that even if a party is reviewing or appealing against an award or order, he still has to pay the judgment sum according to the award or order unless the Labour Tribunal, the Court of First Instance or Court of Appeal orders otherwise.

To succeed in an appeal on a point of law, an appellant must establish that the presiding officer has wrongly applied a principle of law; misunderstood a statute; reached a decision that no reasonable tribunal could have reached; or come to a conclusion that was perverse since there was no evidence whatever to support it⁵.

Usually, an appeal relying only on the grounds that the appellant disagrees with the finding of facts or the outcome of the trial will not succeed.

Jurisdiction means the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.

Outside the jurisdiction of the tribunal means that the claim or the matters should not be dealt with by the Labour Tribunal, for example, it is not an employment dispute.

The following table illustrates the differences between a review and an appeal.

Review	Appeal
<ul style="list-style-type: none">• The forum is the Labour Tribunal.• The review will normally be heard by the same presiding officer who presided over the trial.• No legal representation is permitted.• Costs are generally lower.• Fresh evidence may be received.• Not bound by the tribunal's previous finding of facts.	<ul style="list-style-type: none">• The forum is the Court of First Instance of the High Court.• The appeal will be heard by a Judge of the Court of First Instance.• Parties may engage lawyers to conduct the appeal.• Legal costs can be substantial.• No fresh evidence may be received on appeal.• No power to reverse or vary the tribunal's finding of facts.

As the legal costs involved in an appeal may be substantial, it is advisable to seek legal advice before lodging an appeal.

The Free Legal Advice Scheme under the Duty Lawyer Service can provide brief legal advice to the public. However, the Scheme will not offer representation to the parties. There is no means test and the service is free of charge. Appointment to meet the volunteer lawyer must be made in person at any Public Enquiry Service Centres of the Home Affairs Department. For enquiries, please call the Central Telephone Enquiry Centre of the Home Affairs Department at 2835 2500 or visit its website at <http://www.had.gov.hk>. For details concerning the Free Legal Advice Scheme, please call the Duty Lawyer Service at 2526 5969 or visit its website at <http://www.dutylawyer.org.hk>.

Labour Tribunal
2008 (2nd Edition)

¹ The registry of the Labour Tribunal is located at G/F., 36 Gascoigne Road, Kowloon.

² The Clerk of Court's Office of the High Court is located at G/F., High Court Building, 38 Queensway, Hong Kong.

³ Except where leave has been granted by the High Court, a body corporate such as a limited company must be legally represented in an appeal.

⁴ Except where leave has been granted by the High Court, a body corporate such as a limited company must be legally represented in an appeal.

⁵ *Watling v William Bird & Son (Contractors) Ltd* (1976) 11 I.T.R.70