



# ***TRANSITIONAL*** **RULES OF PROCEDURE** **FOR OH&S APPEALS**

## **PART I: AUTHORITY**

1. Sections 96(3) and (4) of the *Occupational Health and Safety Act*, SA 2017, c. O-2.1 (the “new Act”) provide authority for the Alberta Labour Relations Board to hear appeals or reviews arising under the *Occupational Health and Safety Act*, RSA 2000, c. O-2 (the “Act”) which:
  - (a) Arise after December 15, 2017;
  - (b) Arose, but had not been commenced, before December 15, 2017;
  - (c) Commenced before December 15, 2017, but which the Occupational Health and Safety Council (the “Council”) are unable to conduct the review or appeal.
2. Pursuant to section 96(5) of the new Act, references to the Council in sections 16, 17, 35 and 37 of the Act are deemed to be references to the Board.
3. Section 16(1) of the Act provides authority for the Board to hear appeals from orders, administrative penalties, and cancellations and suspensions of licences. Section 35 of the Act authorizes the Board to hear imminent danger complaint appeals. Section 37 of the Act authorizes the Board to hear disciplinary action complaint appeals.
4. Section 17(7) of the Act provides authority for the Board to establish rules of procedure respecting the hearing of appeals.
5. Where a provision of these Rules conflicts with the Act, the Act shall prevail.

## **PART II: DEFINITIONS**

6. In these *Rules of Procedure*:
  - (a) “Appeal Panel” means the three Board members assigned by the Board Chair to hear an appeal in accordance with section 17 of the Act;
  - (b) “Appeal Record” means the OHS officer’s Decision Letter, Notice of Appeal, the Record, and Respondent Statement (if any);

- (c) “Appellant” means a person to whom an order is issued under sections 9, 10, 11, 12, 14, 25 or 33, or whose licence has been cancelled or suspended, or who has been given a notice of administrative penalty under section 40.3, or who has filed an appeal relating to an imminent danger complaint under section 35 or a disciplinary action complaint under section 37;
- (d) “Board” means the Alberta Labour Relations Board;
- (e) “Board Chair” means the Chair of the Alberta Labour Relations Board, appointed pursuant to section 8(3) of the *Labour Relations Code*;
- (f) “Board Member” means a person appointed to the Board pursuant to section 8(2) of the *Labour Relations Code*;
- (g) “Decision Letter” means the letter from the OHS officer who investigated and decided the matter in the first instance;
- (h) “Director of Inspection” is the individual designated under section 37(3) to receive appeals. Contact information for that individual is indicated on the Notice of Appeal;
- (i) “OHS” means Alberta Occupational Health and Safety;
- (j) “Record” means all evidence and information before the OHS officer at the time of making the order, administrative penalty, cancellation, suspension or record being appealed from and relevant to that decision;
- (k) “Respondent” means a person named in the appeal who may respond to the merits of the appeal:
  - (i) In appeals under section 16(1), the Respondent is OHS;
  - (ii) In imminent danger complaint appeals under section 35 of the Act and disciplinary action complaint appeals under section 37 of the Act, a Respondent is: (A) in the case of an appeal by a worker, the employer, or (B) in the case of an appeal by an employer, the workers who received the record being reviewed;
- (l) “Vice-Chair” means a vice-chair of the Alberta Labour Relations Board, appointed pursuant to section 8(3) of the *Labour Relations Code*.

### **PART III: SERVICE OF DOCUMENTS ON THE BOARD AND PARTIES**

7. Appeals and submissions may be served upon the Board to the attention of the Director of Inspection in the following ways:

By mail or delivery to:

Director of Inspection  
Alberta Labour Relations Board  
501, 10808 – 99 Avenue  
Edmonton, Alberta T5K 0G5

or

Director of Inspection  
Alberta Labour Relations Board  
308, 1212 – 31 Avenue NE  
Calgary, AB T2E 7S8

By fax to:

Attention: Director of Inspection  
(780) 422-0970 or (403) 297-5884

By e-mail to:

[ALRB.OHSAPPEALS@gov.ab.ca](mailto:ALRB.OHSAPPEALS@gov.ab.ca)

8. Submissions received outside office hours of the Board will be deemed to have been received at 8:15 AM the following business day.
9. Any appeal or submission sent by e-mail must be in the form of an e-mail attachment. E-mail attachments must be legible. Documents which are illegible or cannot be opened by the Board will not be accepted.
10. Parties must provide the Board with an address for service of documents in the appeal, and may provide an e-mail address for service. Service of any document upon the party is deemed to occur upon the earliest of:
- (a) delivery of the document to the address for service,
  - (b) seven days after mailing of the document to the address for service, or

(c) sending of the document to the e-mail address for service.

11. The Appellant is not required to serve the Notice of Appeal on any other party. The Board will serve copies of the Notice of Appeal upon all necessary Respondents. Parties are responsible for serving copies of any other material or submissions submitted to the Board upon all other parties to the appeal.

#### **PART IV: STAYS OF ORDERS AND ADMINISTRATIVE PENALTIES**

##### **Orders**

12. Persons who appeal orders issued under sections 9, 10, 11, 12, 14, 25 and 33 the Act, or persons whose licence has been cancelled or suspended, may apply for a stay of the order, pending the appeal to the Board. Applications for stays should be sent in the form of a letter, submitted to the attention of the Director of Inspection.
13. The Board Chair or a Vice-Chair will be assigned by the Board Chair to hear the application for a stay. The Board Chair or Vice-Chair assigned will determine the procedure to be followed to obtain information sufficient to render a decision on whether a stay should be granted.

##### **Administrative Penalties**

14. Pursuant to section 16(7.1) of the Act, payment of administrative penalties is automatically stayed upon commencement of an appeal of the penalty until such time as the Board renders its decision or the appeal is withdrawn or deemed to be withdrawn.

#### **PART IV: APPEAL PANEL STRUCTURE**

15. Appeal Panels shall consist of the Board Chair or a Vice-Chair presiding, and two other Board Members.
16. Board Members with direct involvement in the matter under appeal or with any conflict of interest arising from the matter under appeal shall not sit on the Appeal Panel.

**PART V: FILING THE APPEAL AND PRELIMINARY PROCESSES**

17. A Notice of Appeal, in the form established by the Board, and all information required by that form, must be completed by the Appellant and forwarded to the Director of Inspection in the manner indicated on that form. The Notice of Appeal must be received by the Director of Inspection within 30 days from the date the order, suspension or cancellation, record concerning a disciplinary action complaint or imminent danger complaint, or notice of administrative penalty was received by the Appellant.
18. The Notice of Appeal must contain the Appellant's contact information, current and valid email and mailing addresses, a statement of when the OHS officer's decision letter was received, whether an oral hearing or appeal by written submissions is requested, a full statement of the reasons for appeal and what relief is requested, a list of anticipated witnesses and a summary of what those witnesses will say (if applicable), and dates the Appellant would be unavailable for a hearing (if applicable). A copy of the OHS officer's Decision Letter must be attached to the Notice of Appeal.
19. Upon receipt of the Notice of Appeal, the Board will notify the Respondent and, where OHS is not the Respondent, OHS.
20.
  - (a) Where the Respondent is OHS, then OHS or its agent will file the Record concerning the order, administrative penalty, cancellation, suspension or record being appealed, and file a written response to the appeal using the Respondent Statement form, to be received within 15 business days of the date of the Notice of Appeal;
  - (b) Where the Respondent is not OHS:
    - (i) the Respondent may file a voluntary written response to the appeal using the Respondent Statement form, to be received within 15 business days of the date of the Notice of Appeal; and
    - (ii) OHS or its agent will file the Record concerning the record being reviewed, and may file a voluntary written response to the appeal using the Respondent Statement form, to be received within 15 business days of the date of the Notice of Appeal.
21. The parties' initial documents should indicate any special needs that would be required in the event an oral hearing is held, such as language or sign interpreters.
22. All parties should be aware that hearings and decisions of the Board are public. As a result, filed documents and evidence may become public and may be referred to in the

Board's decisions. The Board's decisions are reported on the Board's website and may be reported by other legal decision reporting services. An exception to this general practice may be made, at the discretion of the Board, in cases where sensitive personal information will be disclosed. Individuals wishing to have their names masked may apply to the Board by letter setting out the reasons for the request including what sensitive personal information will be disclosed. This request should be made early on in the processing of the application.

23. The Board Chair will perform a preliminary review of the Appeal Record to determine whether the appeal was filed within the statutory time period, whether the file is sufficiently complete to proceed or whether further information is required to be submitted, and whether the Board has jurisdiction to hear and decide the matters stated in the appeal.
24. The Board Chair may refer the Appeal Record in an imminent danger complaint or disciplinary action complaint appeal to an Appeal Panel to determine whether there is basis to summarily dismiss the request for a review without a hearing, pursuant to sections 35(1) or 37(4)(a) of the Act. Reasons for doing so include failure of the Appellant to state a case within the legal authority of the Board, or one which has on its facts or the law essentially no chance of success, filing an incomplete Notice of Appeal, asserting for the first time on appeal new material facts or issues without adequate justification, refusal of the Appellant to participate in the appeal or remain in contact with the Board, where the relief requested or obtainable is *de minimis*, where it is clear the Appellant's matter has been adequately reviewed and decided in another forum with overlapping jurisdiction (such as a union grievance), where the appeal is frivolous, vexatious, filed with improper motives or otherwise an abuse of process, where the original event that gave rise to the complaint is substantially dated and other varieties of mootness where any order of the Board would have little practical effect.
25. Where the matter is to be set down for a hearing, the Board Chair may determine whether an oral hearing is necessary or whether the issues may be fairly determined by an appeal by written submissions alone.
26. The Board Chair will grant priority to hear and decide imminent danger complaint appeals and administrative penalty appeals.
27. The Appellant may abandon the appeal at any time by completing, signing and filing the Notice of Withdrawal of Appeal form any time before the Board's decision.

28. If the Appellant, at any time in the process, cannot be contacted, fails to adequately respond to communications from the Board within a reasonable time, or fails to reasonably cooperate in moving the appeal forward, the Board Chair may deem the appeal abandoned. If the Respondent fails to respond within a reasonable time, the appeal may proceed and be decided without further notice to the Respondent. Appellants and Respondents must ensure communications will be received at the contact information and address(es) for service provided to the Board, and must immediately advise the Board of any change of contact information.
29. Appellants must make their own case on the merits to win the appeal. The Board is not an advisor or advocate for either side. The Board is not an investigator, or a regulator or agency of first instance in Occupational Health and Safety matters. The Board is only the Occupational Health and Safety appeal body. It will consider whether the OHS officer's decision was reasonable based on the facts and the applicable law. Appellants have a burden to convince the Appeal Panel that the OHS decision being appealed was erroneous to such an extent that the Board must vary or repeal it.

#### **PART VI: THE HEARING**

30. An appeal may be conducted entirely by written submissions, without an oral hearing. The parties will express a preference for the appeal format from two options listed on the Notice of Appeal. The Board Chair will determine the appeal format, ensuring that the issues can be fairly determined in that format. The options are:
  - (a) Written submissions alone (no opportunity to cross-examine witnesses); or
  - (b) In-person oral hearing (may increase parties' costs and the time to reach a decision)
31. Parties must cooperate with the original OHS investigation, and should never deliberately withhold relevant information or evidence from, or refuse to cooperate with, the OHS officer or investigator. Appeals to the Board will generally be based only upon the information and evidence which was available to the investigating officer, and only in special circumstances will new evidence, not shared with the investigating officer, be permitted in the appeal. Parties may apply to present "new" evidence in special circumstances. The party must convince the Appeal Panel it is relevant to the issues under appeal, would make a material difference to the outcome of the case, and was not readily available, with ordinary diligence, to be presented in the earlier investigation.

### **Appeals by Written Submission**

32. If the appeal will proceed by written submissions, the parties will be requested to provide written submissions of fact and argument.
33. The Appellant's written submissions must be filed within 10 business days of request by the Board.
34. Respondents who wish to participate in the appeal beyond the Appeal Record must file their written submission in response within 10 business days of receipt of the Appellant's submission. This may include appropriate submissions from OHS in appeals where it is not the Respondent.
35. The Appellant may file a rebuttal submission addressing the Respondent's submission within 5 business days of receiving it.
36. The Appeal Record, together with the subsequent filings by the Appellant and the Respondent, will comprise the appeal file.
37. Parties' submissions shall be as concise as possible, and no longer than 3000 words. Submissions should focus on relevant facts and the safety and legal issues in question.

### **Appeals by Oral Hearing**

38. The Board will select a date and location for the oral hearing, after consultation with the parties. Hearings will take place at the Board's offices in either Edmonton or Calgary.
39. Parties shall exchange any written material they wish to present at the hearing at least two weeks in advance of the hearing. Parties shall bring at least four (4) copies of any written materials to the hearing to be provided to the Appeal Panel.
40. (a) Except as otherwise ordered by the Appeal Panel, presentations by parties will generally be heard in the following order: (i) Appellant (or representative), (ii) Respondent (or representative); with closing statements in the reverse order.  
  
(b) Where OHS is not the Respondent, the OHS officer or agent of the regulator may present first to assist the Board in understanding the contents of the Record, the investigation conducted, and the reasons for the decision. In such cases, OHS is normally not a participant in or subject to the regular adversarial process of oral hearings, and the Board may limit any questioning of the OHS officer to that appropriate to the circumstances.



41. The Board is not bound by the formal rules of evidence applicable in the courts.

## **PART VII: WITNESSES**

42. The Board has the same power as is vested in the Court of Queen's Bench of Alberta for the trial of civil actions: (a) to summon and enforce the attendance of witnesses, (b) to compel witnesses to give evidence under oath or otherwise, (c) to compel witnesses to give evidence in person or otherwise, and (d) to compel witnesses to produce any record, object or thing that relates to the matter being heard.
43. Parties seeking to have the Board compel the attendance of witnesses or the production of documents shall file an Application for a Notice to Attend / Notice to Attend and Produce with the Director of Inspection in the form required by the Board. Issues concerning the issuance of a Notice to Attend / Notice to Attend and Produce, and any dispute concerning this Rule, may be determined by the Chair or a Vice-Chair.
- (a) An application to the Board for an order to issue a notice to attend or a notice to attend and produce documents for a hearing before the Board shall
    - (i) state why the notice is required, and
    - (ii) describe any document or class of documents sought to be produced in sufficient detail that the person to whom the notice is directed may identify and produce the requested documents without undue difficulty.
  - (b) A notice to attend or a notice to attend and produce documents directed to an individual shall be personally served on the witness.
  - (c) A party may apply for a notice to attend and produce documents to issue in the name of a corporation, trade union, or employer's organization.
  - (d) Service may be affected pursuant to any method described in the Board's general Rules of Procedure.
  - (e) Unless otherwise agreed between them, the party serving a notice under this rule shall provide to the witness in advance of the hearing:
    - (i) conduct money of \$25.00 for each day, or any portion of that day, that the party requires the person's attendance, and
    - (ii) transportation arrangements to and from the hearing or, in its place,

- A) an allowance for air, bus or train fare by the most direct route, or
  - B) mileage costs for private vehicle use at \$0.43 per kilometre, and
- (iii) if necessary, arrangements for overnight lodging of reasonable quality or an allowance of \$110.00 per night, and
- (iv) a meal allowance of \$8.50 per breakfast, \$10.75 per lunch and \$19.20 per supper.

### **PART VIII: ADJOURNMENTS AND EXTENSIONS**

44. Any request for an adjournment of an oral hearing or for more time to file written submissions shall be made in writing to the Director of Inspection as soon as possible with detailed reasons for the request.
45. The Director of Inspection, or his or her designate, may grant extensions of time for filing written submissions. Requests for adjournment of hearings will be considered by a Chair or Vice-Chair.
46. Adjournments are not granted as of right, and will rarely be granted near to, or during, an oral hearing in the absence of strong grounds. The Board will consider the reasons for the request, the timeliness of the request, the position of other parties, any prejudice to any person, the interests of effective and efficient administration of justice, procedural fairness to all parties, and the regulatory objectives of the Act.
47. Where an adjournment of an oral hearing may cause inordinate delay, in appropriate cases the Chair may direct the appeal be conducted by written submissions.

### **PART IX: GENERAL**

48. The Board may, where it considers it necessary to avoid a miscarriage of justice, relieve against the failure of any person to comply with these Rules and may make such direction in respect of the non-compliance as it deems appropriate.