

# **Safety Standards Appeal Board**

## **Rules of Practice and Procedure**



**Safety Standards Appeal Board**

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# Safety Standards Appeal Board

## RULES OF PRACTICE AND PROCEDURE

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## RULES OF PRACTICE AND PROCEDURE

### PART 1 - GENERAL

#### Rule 1 - Purpose

1. The purpose of these Rules is to facilitate the just and timely resolution of appeals to the Board under the *Safety Standards Act*, the *Homeowner Protection Act*, and the *Building Act*.
2. The Board may publish guidelines and practice directions to assist the parties in using these rules and to set requirements for Board practice and procedure. These rules must also be read together with the *Safety Standards Act* and Regulations, the *Homeowner Protection Act* and Regulations, and the *Building Act* and Regulations.

#### Rule 2 - Effective Date

1. These Rules will come into effect on March 29, 2017 and supersede all rules made before that date.

#### Rule 3 - Definitions

1. In these Rules:

"**Act**" means the Act under which the decision being appealed was made, either the *Safety Standards Act*, S.B.C. 2003 c. 39 and amendments, the *Homeowner Protection Act*, S.B.C. 1998 c. 31 and amendments, or the *Building Act*, S.B.C. 2015, c. 2 and amendments and includes all regulations made under the Acts;

"**agent**" means a person who is authorized by a party to act for or in place of the party;

"**appeal**" means an appeal to the Board pursuant to section 51 of the *Safety Standards Act* or section 29.3 of the *Homeowner Protection Act* or a request for review referred directly to the Board under section 48(5) of the *Safety Standards Act* or section 29.1(6) of the *Homeowner Protection Act*; or pursuant to s. 30(1) of the *Building Act*;

"**appeal record**" means the decision being appealed and any reasons given for it, any documents produced in evidence before the decision-maker, any submissions filed by the parties before the decision maker, a transcript, if any, of the oral evidence given at a hearing and any intermediate orders made by the decision-maker;

"**appellant**" means the person bringing an appeal;

"**applicant**" means a person who makes an application under these Rules

"**ATA**" means the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 and

amendments, including all regulations made under that Act;

**"Board"** means the Safety Standards Appeal Board established under section 43 of the *Safety Standards Act*;

**"dispute resolution process"** means the process established by the Board to facilitate the settlement of an appeal or part of an appeal;

**"document"** includes a book, map, drawing, chart, letter, paper, photograph, film, recording of sound, and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means;

**"expert"** means an individual that is providing subject matter expertise to the Board in support of one party or another.

**"expert"** means an individual that is providing subject matter expertise to the Board in support of one party or another.

**"file"** means the effective delivery to the Board of any document or evidence in accordance with these Rules;

**"intervener"** means a person that the Board allows to participate in an appeal under section 33 of the *Administrative Tribunals Act*;

**"mediation"** means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;

**"mediator"** means a neutral and impartial facilitator, with no decision-making power, who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them;

**"participant"** means an appellant, respondent or intervener in an appeal;

**"registrar"** means the registrar of the Board;

**"respondent"** means the decision maker whose decision is being appealed or any person against whom an application is made;

**"serve"** or **"service"** means the effective delivery or transmission to a person, of any document in accordance with these Rules;

**"signature"** includes "electronic signature" as defined by the *Electronic Transactions Act*, S.B.C. 2001,c.10

**"transmit"** or **"transmission"** means sending of communications or documents courier, facsimile, or electronic mail (e-mail)

#### **Rule 4 - Application of Rules and Board Powers**

1. All parties and interveners must comply with the Board's Rules unless the Board orders or directs otherwise.

2. In exceptional circumstances, a member may waive or vary these Rules and may shorten or lengthen any time limits in these Rules, other than time limits prescribed by the *Safety Standards Act*, the *Homeowner Protection Act*, the *Building Act* or the *Administrative Tribunals Act*, whether upon application of a party or the Board's own initiative.
3. In calculating time under these rules or in an order or direction of the Board
  - (a) the number of days between two events is counted by excluding the days on which those events happen, and
  - (b) if the last day of a time period for delivering a document or doing any other thing falls on a weekend or public holiday, the time ends on the next business day.
4. To apply to extend or reduce a time limit, a participant must deliver a written request to the Board that explains:
  - (a) the reason(s) for the request;
  - (b) whether other participants agree to the extension or reduction of the time limit (if known); and
  - (c) whether an injustice would result if the extension or reduction of the time limit were not granted.
5. Before granting the extension or reduction of a time limit, the Board will give other participants an opportunity to be heard.

#### **Rule 5 - Effect of Non-Compliance**

1. If a participant fails to participate in the appeal process in accordance with these rules or a procedural order or direction of the Board, the Board may:
  - (a) manage, hear and dispose of the appeal without the participation of that participant, including, if that participant is the appellant, summary dismissal of the appeal without hearing evidence, and
  - (b) make any order or direction that the Board considers fair.

#### **Rule 6 – Representation**

1. A participant may be represented by a lawyer or other agent.

## **Rule 7 - Communications with the Board**

1. Unless the Board orders otherwise, all communications with the Board must be made through the Board's registrar at the following address:

Courier Address: Safety Standards Appeal Board  
Unit 1270 – 605 Robson Street  
Vancouver, BC V6B 5J3

Mailing Address: Unit 1270 – 605 Robson Street  
Vancouver, BC V6B 5J3  
Phone: 778-572-1968  
Fax: 250 356-6645  
E-mail: [SafetyStandardsAppealBoard@gov.bc.ca](mailto:SafetyStandardsAppealBoard@gov.bc.ca)

2. A document may be delivered to the Board office by hand, mail, courier, e-mail or facsimile. A document that is served by facsimile must include a cover page with sufficient information to identify the sender, recipients, number of pages sent, date and time of transmission and a telephone number to call in case of transmission problems.
3. The hours of operation of the Board office are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding public holidays.
4. A document that is received after regular hours of operation is deemed delivered on the next day that the Board office is open.
5. A copy of any document filed with the Board must be served on all other participants in advance or on the same day except for a parties' initial Notice of Appeal.

## **Rule 8 – Identifying Participants**

1. Any participant, agent or counsel representing a participant at any appeal proceeding must identify their full name and provide contact information as required by Rule 9(3).

## **PART 2 - SERVING AND FILING DOCUMENTS**

### **Rule 9 - Contact Information**

1. A participant must provide the Board with contact information consisting of their:
  - (a) full name;
  - (b) current mailing address in British Columbia;
  - (c) telephone number, fax and e-mail address (if any) and
  - (d) name and contact information for the participant's counsel or other agent.
2. If a participant is represented by a counsel or agent, the Board will communicate with them through their counsel or agent.
3. If a participant is represented or assisted by counsel or agent, the counsel or agent must provide the Board with contact information consisting of their:
  - (a) full name;
  - (b) current mailing address in British Columbia; and
  - (c) telephone number, fax and e-mail address (if any).
4. A participant must promptly notify the Board of any changes in their contact information or any change in counsel or agent.

### **Rule 10 - Service of Documents**

1. Service may be effected at the address information filed by the parties by:
  - (a) personal delivery;
  - (b) ordinary, registered or certified mail;
  - (c) electronic transmission, including e-mail and fax;
  - (d) courier, including Priority Post, to the last known address of the person; or
  - (e) any other means authorized or permitted by the Board that allows proof of receipt.
2. A document that is served by fax must include sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission and a telephone number to call in case of transmission problems.



3. Service is deemed to be effective, when delivered:
  - (a) by personal delivery before 4:00 p.m., on the day of delivery, and after that time, on the next day;
  - (b) by mail, on the fifth day after the day of mailing unless that day is a holiday, in which case service is deemed to be effective on the next day that is not a holiday;
  - (c) by e-mail or fax, on the day after it was sent unless that day is a holiday, in which case service is deemed to be effective on the next day that is not a holiday;
  - (d) by courier, on the second day after the document was given to the courier unless that day is a holiday, in which case service is deemed to be effective on the next day that is not a holiday; or
  - (e) by any means, including substituted service, authorized or permitted by the Board, on the date specified by the Board in its direction.
4. The Board shall be responsible for service of any Notices of Appeal or Applications filed with the Board on the appropriate Respondent.
5. If a notice or document is not served in accordance with Rule 10.1 the proceeding is not invalidated if the Board determines that the failure to serve does not result in prejudice to the person or any prejudice can be satisfactorily addressed by an adjournment or other means.

#### **Rule 11 - Notice to Parties**

1. If the Board is required to provide notice or any document to a party or other person it may do so by any of the transmission methods set out in Rule 10; however preference will be given to communicating via email whenever possible.

## PART 3 - STARTING AN APPEAL

### Rule 12 - Starting an appeal

1. To start an appeal, the appellant must transmit a Notice of Appeal to the Board within **30 days** of receiving notification of a decision under the *Homeowner Protection Act*, the *Safety Standards Act* or the *Building Act*.
2. Upon receipt of a Notice of Appeal from an appellant, the Board will serve the Respondent with the Notice of Appeal.
3. The Board may extend the time limit for filing an appeal even if it has expired if the Board is satisfied that special circumstances exist.

### Rule 13 - Notice of Appeal

1. The notice of appeal, which may be in the Board's Form 1, must:
  - (a) be in writing, which may include electronic transmission, including e-mail and facsimile;
  - (b) contain the appellant's contact information;
  - (c) include a copy of the decision or order that is being appealed and identify the date the appellant was notified of the decision;
  - (d) state why the decision being appealed is being challenged;
  - (e) state the requested outcome of the appeal;
  - (f) contain a facsimile of the certificate, license, registration or qualification under appeal, if applicable;
  - (g) if filed more than **30 days** after receiving notification of the decision being appealed, contain an application to extend the time limit, including the reason the appeal was filed after the 30 day appeal period and any supporting documentation relating to the application;
  - (h) be signed by the appellant or the appellant's lawyer or agent.
2. If an appellant is also applying for a stay of the decision under appeal or an order extending the time limit for filing an appeal, that application may be in the Board's Form 4 (Application for an Order) and must:
  - a) Contain the appellant's contact information;
  - b) Include a Description of the Order Sought
  - c) Include Reasons why the Order is Required

- d) Include a summary of any legislation relied on in support of the application
  - e) Include any evidence relied on in support of the application;
  - f) Include a summary of the steps taken to resolve issue at hand prior to filing application;
  - g) Be signed by the appellant; and
  - h) be filed with the Notice of Appeal in accordance with Rule 13.1.
3. If the Notice of Appeal appears to be deficient, the Board will notify the appellant and allow up to **14 days** for the appellant to correct the deficiency.

**Rule 14 - Validity of appeal**

- 1. If there is any question regarding the Board's jurisdiction to proceed with an appeal, it will request written submissions from the participants.
- 2. Unless the Board orders otherwise, any submissions requested under Rule 14.1 must be filed within **14 days** of the date of service of the Board's request for submissions.

## PART 4 - RESPONDING TO AN APPEAL

### Rule 15 - Responding to an Appeal

1. A Response to an Appeal must be filed within 14 days of the date the respondent was served with a copy of the Notice of Appeal by the Board.
2. The Board may extend the time limit for responding to an appeal, upon application by the respondent, if it is satisfied that special circumstances exist.
3. The response, which may be in Form 2, must:
  - (a) be in writing, which may include electronic transmission, including email and facsimile;
  - (b) contain the respondent's contact information;
  - (c) contain the appeal record;
  - (d) contain the grounds on which the decision being appealed was made, indicating specific provisions of the *Safety Standards Act*, *Homeowner's Protection Act*, *Building Act*, associated regulation(s) and code rule(s) which support the decision under appeal;
  - (e) if applicable, include an application for an order dismissing the appeal on the grounds the Board does not have jurisdiction in the appeal;
  - (f) if applicable, include a response to the appellant's application for a stay of the decision under appeal, including the reasons the decision should not be stayed and any supporting documentation relating to the application.

**PART 5 - REMOVING, ADDING OR SUBSTITUTING PARTIES  
AND INTERVENERS TO AN APPEAL**

**Rule 16 - Removing, adding or substituting parties**

1. On its own initiative or on the application of a person, the Board may remove, add or substitute a person as a party to an appeal.
2. An application to remove, add or substitute a party to an appeal may be made by delivering an application in writing to the Board that demonstrates
  - (a) the person to be removed as a party is not, or has ceased to be, a proper or necessary party to the appeal, or
  - (b) the person to be substituted or added as a party is a proper or necessary party to the appeal to ensure that all matters in the appeal are properly adjudicated.
3. The Board will give the parties an opportunity to be heard before removing, adding or substituting a person as a party to an appeal.
4. The Board will not add or substitute a person as an appellant without that person's consent.

**Rule 17 - Interveners**

1. A person may apply to participate as an intervener in an appeal under the *Homeowner Protection Act* or the *Safety Standards Act* or the *Building Act* by delivering a written application to the Board that demonstrates
  - (a) the person can bring a valuable contribution or bring a valuable perspective to the appeal; and
  - (b) the potential benefits of the intervention outweigh any prejudice to the parties caused by it.
2. The Board will give the parties an opportunity to be heard before granting an application to intervene in an appeal.
3. The Board may limit or impose terms and conditions on the participation of an intervener in an appeal.

## **PART 6 - MANAGEMENT OF APPEALS**

### **Rule 18 - Appeal management procedures**

1. At any time after receiving a notice of appeal, on the written application of a party, or on the Board's own initiative, the Board may require the parties to do any one or more of the following:
  - (a) provide information on the issues under appeal;
  - (b) prepare and produce statements of issues, evidence and legal principles within a specified time;
  - (c) attend an appeal management conference;
  - (d) attend a settlement conference;
  - (e) consider participation in a dispute resolution process; or
  - (f) where at least one party desires to participate in a dispute resolution process, order the parties to participate in a process appropriate to the circumstances of the case.

### **Rule 19 - Appeal Management Conferences**

1. The Board will require the parties to attend an initial Appeal Management Conference at the earliest opportunity after the Respondent has filed its Reply with the Board.
2. An Appeal Management Conference may be held in person, by telephone conference or by any other method specified by the Board.
3. An Appeal Management Conference shall not be open to the public unless the Board otherwise orders.
4. A member conducting an Appeal Management Conference may make any order considered appropriate for the efficient conduct of the appeal and, without limitation, may make recommendations, directions and orders with respect to:
  - (a) the identification and simplification of the facts and issues;
  - (b) the timely disclosure of documents, witness lists and written summaries of anticipated evidence;
  - (c) determining whether preliminary or interim matters or the hearing of an appeal will be conducted by any combination of written, electronic or oral hearing;
  - (d) time estimates and scheduling;
  - (e) procedural matters raised by the Board or the participants;

- (f) any steps taken to reach agreement on the issues;
- (g) notice requirements for an expert witness and the requirement for a written summary of the evidence to be given by an expert witness;
- (h) requirements for experts who have been retained by the parties to confer, on a without prejudice basis, to determine issues, facts and opinions on which they agree or do not agree;
- (i) requirements for answering questions of another party under oath or affirmation by way of oral examination or affidavit prior to the commencement of a hearing;
- (j) requirements for agreed statements of facts;
- (k) requirements for written submissions;
- (l) recording the results of the appeal management conference including a summary of the issues and any orders, directions or rulings of the Board.

#### **Rule 20 - Statements of Issues, Evidence and Legal Principles**

1. The Board may make directions with respect to the information to be included in a statement and require that a statement be prepared and filed with the Board and served on the other parties within a specified time.
2. The Board may make directions requiring responses to the statements to be prepared and filed with the Board and served on the other parties within a specified time.
3. If the parties agree, or the Board considers it appropriate, the statements and any responses may be presented to a panel for hearing as written submissions in an appeal.

#### **Rule 21 – Appeals involving similar questions**

1. If two or more appeals before the Board involve the same or similar questions of fact or law the Board may, on the application of a party or on the Board's own initiative:
  - (a) combine the appeals or any part of them;
  - (b) hear the appeals at the same time;
  - (c) hear the appeals one immediately after the other; or
  - (d) stay one or more of the appeals until after the determination of one of them.

2. The Board may make additional orders respecting the procedure to be followed with respect to applications under this section.



## **PART 7 - DISPUTE RESOLUTION AND SETTLEMENT OF APPEALS**

### **Rule 22 - Settlement conferences**

1. Settlement conferences will be conducted by a member appointed by the chair and may be held in person, by telephone conference or by any other method as the member may direct. A member who conducts a settlement conference will not subsequently hear the appeal unless all parties consent.
2. The member has discretion in the manner in which a settlement conference will be conducted and, without limitation, may:
  - (a) facilitate discussion between the parties towards a settlement of the issues and make recommendations to the parties concerning dispute resolution processes that may be helpful in the circumstances, including mediation, neutral evaluation, joint fact finding or other processes;
  - (b) meet with each party individually;
  - (c) provide non-binding opinions on any issue under appeal;
  - (d) provide an evaluation on the likelihood of success in a hearing on any issue under appeal;
  - (e) make any order that may be made at an appeal management conference;
  - (f) adjourn the settlement conference;
  - (g) refer the appeal or any issue under appeal to the registrar to schedule an appeal management conference or a hearing;
  - (h) report the results of the settlement conference including any settlement reached and any interim orders made.
3. Discussions in a settlement conference are confidential and without prejudice in the same manner as are other settlement communications.
4. A settlement conference will not be open to the public.
5. Unless the parties otherwise agree, a member presiding over a settlement conference will return to the parties all documents filed for the purpose of the conference.
6. If the parties resolve some or all of the issues under appeal during a settlement conference, the parties must comply with Rule 41 with respect to notification of the Board.

**Rule 23 - Mediation**

1. The chair may appoint a member or staff of the Board to conduct a mediation.
2. Subject to the approval of the chair the parties may, by agreement among themselves, appoint a mediator.
3. Where a member conducts a mediation, the member may make pre-hearing orders in respect of the appeal but must not hear the appeal unless all parties consent.
4. If the parties resolve some or all of the issues under appeal during a mediation, the parties must comply with Rule 41 with respect to notification of the Board.

**Rule 24 - Confidentiality of settlement discussions and mediation**

1. Unless all parties consent, a party must not disclose or be compelled to disclose:
  - (a) a document or other record created by a party specifically for the purpose of achieving a settlement of one or more of the issues under appeal through a settlement conference or mediation; or
  - (b) oral information presented by a party in a settlement conference or mediation specifically for the purpose of achieving a settlement of one or more of the issues under appeal.

**Rule 25- Confidentiality Agreement**

1. Prior to a settlement conference or mediation all parties in a settlement meeting must sign a Confidentiality Agreement as prescribed in Form 3 of these Rules. If the parties are unable to sign a Confidentiality Agreement the presiding member of the dispute resolution process may order that all communications at the settlement conference or mediation are confidential and without prejudice.

## **PART 8 - APPLICATIONS FOR BOARD ORDERS**

### **Rule 26 – Application of this part**

1. This part applies to all applications made to the Board except:
  - (a) an application made during a hearing; and
  - (b) an application for a summons under Rule 38.

### **Rule 27 - Application for a Board order**

1. If an applicant wants to obtain an order from the Board, the applicant must request a Board Order, which may be in Form 4. The application for a Board Order must set out the Order requested and brief reasons why the Order should be granted.
2. Upon receipt of the application for a Board Order, the Board will serve a copy of the application on all other parties to the appeal.

### **Rule 28 – Responding to an application**

1. Unless the Board orders otherwise, any response to an application under Rule 27.1 must be filed within **7 days** of the date the respondent was served with a copy of the application.

### **Rule 29 – Timing of applications**

1. An applicant shall not request a Board Order until after the initial appeal management conference has been held in an appeal.
2. Rule 29(1) does not apply to the following applications:
  - (a) an application for a stay of the decision under appeal;
  - (b) an application for an extension of time for filing an appeal; or
  - (c) an application respecting the jurisdiction of the Board to hear an appeal.

## **PART 9 - HEARINGS**

### **Rule 30 - Composition of Panel**

1. The chair may direct that an appeal be heard by a single member of the Board, a panel of 3 members or the full Board.
2. The decision of a single member panel or of a majority of members on a panel is the decision of the Board.

### **Rule 31 - Types of Hearings**

1. The Board may direct that a hearing be conducted by way of:
  - (a) an in-person hearing;
  - (b) telephone and/or video conference;
  - (c) written materials and submissions delivered to the Board;
  - (d) any electronic means the Board determines is appropriate, or
  - (e) any combination of (a), (b), (c) or (d).
2. The Board has discretion to determine the location for a hearing.

### **Rule 32 - Legal Authorities**

1. If a party intends to refer to legal authorities in a submission to the Board at a hearing, the party must produce to the Board and the other parties copies of the legal authorities, and must highlight those passages of the authorities intended to be referred to.

### **Rule 33 - Interpreters**

1. If a person requires an interpreter, the party shall notify the Board.
2. An interpreter must be competent and independent and must swear or affirm that they will interpret accurately.

### **Rule 34 - Public Proceedings**

1. An oral hearing will be open to the public.
2. Notwithstanding Rule 34.1 the Board may direct that all or part of the evidence in an appeal be received in confidence if the Board is of the opinion that:
  - (a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(b) it is not practicable to hold the hearing in a manner that is open to the public.

3. Members of the public are entitled to reasonable access to documents submitted in a hearing unless the Board considers that Rule 34.2 (a) or sections 41(2) (a) or 42 of the *Administrative Tribunals Act*, SBC 2004, c. 45 applies to those documents.
4. Interim and final decisions of the Board may be published on the Board's website taking into account the circumstances of each case and the principle set out in Rule 34.2 (a).

### **Rule 35 - Recording Board proceedings**

1. The Board may, in its discretion, transcribe or tape record its proceedings.
2. If the Board transcribes or tape records a proceeding, the transcription or tape recording is deemed to be correct and constitute part of the record of the proceeding.
3. If, by reason of a mechanical or human failure or other accident, the transcription or tape recording is destroyed, interrupted or incomplete, the validity of the proceedings will not be affected.
4. Subject to Rule 34.2, on written application by any person, the registrar may release a tape recording of a hearing to a transcriber approved by the Board to prepare a transcript of all or part of a hearing. Unless otherwise ordered by the Board, the person requesting the transcript will be liable for the cost of transcription and delivery.

### **Rule 36 - Information admissible in appeal**

1. An appeal is a new hearing unless the appeal board otherwise recommends and the parties to the appeal agree.
2. The Board may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. It is not bound by the legal or technical rules of evidence.
3. The Board may require testimony to be given under oath or affirmation.
4. Unless otherwise ordered by the Board any other documentary evidence or information (other than expert reports) a participant intends to rely on at a hearing, must be filed and served on all other participants in the appeal at least **14 days** before the date set for a hearing.
5. If the Board allows a participant to rely on any previously undisclosed document at a hearing that participant must bring to the hearing one copy of the document for each panel member and one copy for each other participant.

6. If a participant presents written submissions at a hearing, the participant must provide one copy of the submission for each panel member and one copy for each other participant.
7. If the Board is required to reproduce documents or submissions to provide sufficient copies, the party or intervener entering the document or submission is liable for the cost of reproduction unless otherwise ordered by the Board.
8. The Board may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or intervener, on such terms as the Board sees fit, where the Board is of the opinion that the confidential or sensitive nature of the information or documents requires such a direction to ensure the proper administration of justice.
9. Notes or records or other information kept by a person appointed or retained by the chair to conduct a dispute resolution process are inadmissible before the Board.
10. Information, documents or things produced by a party on a without prejudice basis for purposes of a dispute resolution process are inadmissible before the Board.

#### **Rule 37 - Experts**

1. Unless the Board orders otherwise, a participant who wishes to submit the evidence of an expert must deliver a report stating the qualifications and a summary of the proposed evidence of the expert or a copy of the report
  - (a) at least **30 days** before the scheduled hearing date of the appeal; or
  - (b) in the case of evidence of an expert submitted in response to an expert report delivered by another participant, at least **7 days** before the scheduled hearing date of the appeal.
2. If a party or intervener intends to present an expert report or statement under Rule 37.1 the party or intervener must provide the Board with an original or copy for the Board's official record and one additional copy in a form suitable for photocopying.

#### **Rule 38 - Order to compel a witness and order disclosure**

1. A party may apply to the Board, at least **14 days** before the first day of the hearing, for a summons requiring another person
  - (a) to attend an oral or electronic hearing to give evidence that is admissible and relevant to an issue in the appeal; or

(b) to produce for the Board or another party a document or other thing in the person's possession or control as specified by the Board that is admissible and relevant to an issue in the appeal.

2. The application must be in writing and include the name and address of the witness, the reason their attendance is required, a description of the documents or other items which the witness is requested to bring to the hearing, the reason why such materials are relevant and details of any attempts made to have the witness voluntarily attend.
3. The Board may make an order requiring the party applying for the summons to pay reasonable estimated travelling expenses in advance of the required attendance.
4. If a summons is issued, the party who applied will be required to serve the order on the witness within a reasonable time before the witness is required to appear.
5. A person who is summoned to appear at a hearing may apply to the Board in writing before the hearing, or in person at the hearing, for the summons to be cancelled or amended. The Board may amend the terms of or cancel the summons if satisfied that the evidence of the person:
  - (a) is not relevant;
  - (b) may be obtained through some other means;
  - (c) is protected by legal privilege;
  - (d) the person is not able to provide the information sought; or
  - (e) the attendance of the person will be unduly inconvenient.
6. Except in extenuating circumstances, the Board will give the participant summoning the witness an opportunity to be heard before amending the terms of or cancelling a summons to a witness.

### **Rule 39 - Costs**

1. If the Board finds that the conduct of a participant has been improper, frivolous, vexatious or an abuse of process, the Board may make order for payment of costs.
2. The Board may order costs under Rule 39.1 on its own initiative or on the application of a party.
3. Applications for an award of costs must include a detailed description of costs supported by receipts to the extent possible.
4. If costs are awarded the Board will consider and determine:
  - (a) a reasonable value of costs incurred by the applicant, and

(b) the portion of the value to be allowed in an award.

5. An award for the payment of costs will be based on schedules adopted and published by the Board, from time to time, as appendices to the Board's Rules. See Schedule 1 - Guidelines for Determining Party Costs and Schedule 2 - Estimate of Board Costs.

#### **Rule 40 - Adjournments**

1. The Board may adjourn a hearing or other appeal proceeding at any time on its own initiative.
2. An application to adjourn a scheduled hearing date must be made at the earliest opportunity and may be made:
  - (a) by delivering a written request to the Board that explains the reason(s) an adjournment is required and whether other participants agree to it (if known) or
  - (b) if the hearing is underway, by a verbal request to the Board member(s) hearing the appeal that explains the reason(s) an adjournment is required.
3. When considering whether or not to grant an application for adjournment, the Board will take into account the following factors:
  - (a) the reason for the adjournment;
  - (b) whether the adjournment would cause unreasonable delay;
  - (c) the impact of refusing the adjournment on the other parties;
  - (d) the impact of granting the adjournment on the other parties;
  - (e) the impact of the adjournment on the public interest.
4. If a hearing is adjourned, the Board may order any terms and conditions respecting rescheduling, attendance at appeal management or settlement conferences, production of documents or reports, or any other matters which may assist with the fair and efficient conduct of the appeal.

#### **Rule 41 - Settlements of all or part of an appeal**

1. If the parties reach a settlement in respect of all or part of an appeal, they must promptly notify the Board and any interveners by delivering a written notice of settlement.
2. The notice of settlement may include a request for the Board to make an order that includes the terms of settlement to the extent that those terms are consistent with the *Safety Standards Act*, *Homeowner Protection Act* or *Building Act*.



3. In considering a request under Rule 41.2, the Board may require the parties to provide further information or submissions in support of the application or attend before the Board to speak to it.

#### **Rule 42 - Withdrawals**

1. An appellant may withdraw all or part of an appeal by filing a written notice of withdrawal with the Board at any time before the Board has made its final decision disposing of the appeal.
2. Upon receipt of a filed notice of withdrawal the Board will serve a copy of the notice of withdrawal on the other parties in the appeal.
3. If an appellant has advised the Board or another party to the appeal that they do not intend to pursue an appeal, the Board may require the appellant to provide a written statement to that effect or provide, within a specified time, written confirmation of the intention to pursue the appeal. If written confirmation of the appellant's intention is not filed by the specified time the Board may deem the appeal to be withdrawn and issue an order to that effect.

## **PART 10 - POST-HEARING MATTERS**

### **Rule 43 - Decisions, Orders and Rulings of the Board**

1. The Board's final decision will be made in writing, with reasons.
2. The Board must provide for public access to its decisions and orders taking into account the circumstances of each case and the principle set out in Rule 34.2 (a).
3. Subject to Rule 43.5 the Board shall send each party and any interveners who participated in the proceeding, or the party's counsel or representative, a copy of its final decision, including the reasons.
4. Where the Board is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable to send its final decision to all or any of the parties individually, the Board may, instead of doing so, cause reasonable notice of its decision to be given to such parties by public advertisement or otherwise as the Board may direct.
5. A notice of final decision given by the Board under Rule 43.4 shall inform the parties of the place where copies of it may be obtained.

### **Rule 44 - Enforcing final decisions**

1. A party in whose favour a final decision is made, or a person designated in the final decision, may file a certified copy of the final decision with the Supreme Court.
2. A final decision filed under Rule 44.1 has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.
3. A party filing a final decision under Rule 44.1 must give notice of the filing to the Board within **14 days** of filing.

### **Rule 45 - Disposal of Board records**

1. The Board may dispose of any files, records, documents, tapes or exhibits in an appeal in accordance with a schedule published by the Board and in compliance with the *Document Disposal Act* and the *Freedom of Information and Protection of Privacy Act*.

### Schedule 1 - GUIDELINES FOR DETERMINING PARTY COSTS

SAFETY STANDARDS APPEAL BOARD GUIDELINES FOR DETERMINING PARTY COSTS		
Type	Description	Allowable amount
1	Costs associated with attending an appeal management conference, settlement conference, mediation or hearing	<p>Limited to reasonable out-of-pocket travel expenses as follows:</p> <p>Hotel: Actual cost as approved by the Board. <b>See note 1</b></p> <p>Ferry / air / taxi: Actual cost as approved by the Board. See note 1</p> <p>Meals: Not to exceed the following rates:</p> <ul style="list-style-type: none"> <li>- all meals: 44.00</li> <li>- breakfast only: 22.00</li> <li>- lunch only: 22.00</li> <li>- dinner only 28.50</li> <li>- breakfast &amp; lunch only: 30.00</li> <li>- lunch &amp; dinner only: 36</li> </ul> <p>Vehicle mileage: .46 per km</p>
2	Witness fees and expenses.	Portion of actual cost as approved by the Board. <b>See note 1</b>
3.	Witness travel costs associated with attending an appeal management conference, settlement conference, mediation or hearing	Same as type 1 above. <b>See note 1</b>
4.	Copy of transcript of proceedings	Portion of actual cost as approved by the Board. <b>See note 1</b>
5	Legal Costs	Portion of actual cost as approved by the Board. <b>See note 1</b>
6	Expenses associated with obtaining or producing evidence (if not included under legal costs)	Portion of actual cost as approved by the Board. <b>See note 1</b>
7	Cost of interpreter	Portion of actual cost as approved by the Board. <b>See note 1</b>
8	Other tasks not referred to above	Portion of actual cost as approved by the Board. <b>See note 1</b>
<p><b>Note 1:</b> Applications for an award of costs must include a detailed description of costs supported by receipts to the extent possible. If costs are awarded the Board will consider and determine:</p> <ul style="list-style-type: none"> <li>(i) a reasonable value of costs incurred by the applicant, and</li> <li>(ii) the portion of the value to be allowed in an award.</li> </ul>		

## Schedule 2 - GUIDELINES FOR DETERMINING BOARD COSTS

SAFETY STANDARDS APPEAL BOARD GUIDELINES FOR DETERMINING BOARD COSTS		
Type	Description	Allowable amount
1	Process appeal and acknowledge receipt	\$50 per hour
2	Issue request to correct deficiency e.g. when Notice of Appeal contains insufficient information.	\$25 per hour
3.	Process correction of deficiency e.g. when additional correspondence with Board members or other parties is required as a result of the initial deficiency.	\$25 per hour
4.	Arrange and issue notices for hearing to consider validity of appeal or Board's jurisdiction.	\$50 to \$75 per hour Will vary depending upon extent of efforts to gather more information, complexity of issue and difficulty in scheduling
5	Hearing to consider validity of appeal or Board's jurisdiction.	\$225 per 1/2 day of hearing Plus actual disbursements (e.g. for hearing facility, travel expenses)
6	Issue decision on validity of appeal or Board's jurisdiction.	\$50
7	Arrange and issue notices for appeal management conference, settlement conference or hearing	\$50 to \$75 Will vary depending upon difficulty in scheduling (availability of parties)
8	Conduct appeal management conference or settlement conference	\$225 per 1/2 day Plus actual disbursements (e.g. for hearing facility, travel expenses)
9	Receive and process interim application (e.g. adjournment; order to compel a witness and order disclosure).	\$50 Plus costs of appeal management conference, if required
10	Attendance of recording secretary.	\$25/hour, if Board employee, plus expenses Or actual costs to Board, if contracted recording secretary
11	Hearing cancelled less than 7 days before hearing scheduled.	Actual costs and expenses incurred
12	Preparation of transcript of proceedings at hearing.	Actual cost (disbursement) Transcripts are prepared by private firms, arranged directly between party and service provider.
13	Legal costs.	Actual cost (disbursement).
	Other tasks, not referred to above.	As estimated by Registrar.
<b>Note:</b> If the Board orders a party to pay part of the Board's costs the order will include a detailed description of those costs. The Board will consider and determine a reasonable portion of its costs based on Schedule 2 as amended and published from time to time.		