

# Safety Standards Appeal Board

## Guidelines and Practice Directions



Safety Standards Appeal Board

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# Safety Standards Appeal Board

## GUIDELINES AND PRACTICE DIRECTIONS

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# GUIDELINES AND PRACTICE DIRECTIONS

## PART 1

### GENERAL

#### (Rules 1 – 8)

The purpose of these guidelines and practice directions is to help participants (parties and interveners) in appeals use the Board's rules and the forms required under the rules and to set requirements for Board practice and procedure.

The Board will be actively involved in the management of each appeal by identifying the issues at an early stage and assisting the parties to decide which issues can be resolved by alternative dispute resolution processes instead of a hearing. It will establish timelines to control the progress of the appeal proceeding.

The Board's rules are intended to ensure that appeals will be conducted in a timely, cost effective way that:

- Best supports the interests of the parties
- Addresses the complexities of the issues in the appeal
- Recognizes at all times the paramount importance of public safety

To achieve this purpose the Board will make use of technology, including video and telephone conferencing and written rather than oral proceedings where feasible.

Parties and any legal counsel retained by them are expected to assist the Board in furthering this purpose and to cooperate with each other in the conduct of all proceedings before the Board.

#### **Effective date**

The Board may revise its rules from time to time. Revised rules become effective on the date they are published on the Board's web-site (**Rule 2**).

#### **Definitions**

Certain words used extensively in the Board's rules and in these guidelines are defined in **Rule 3**.

#### **Application of Rules and Board powers**

All participants in appeals are required to comply with the Board's rules. The Board can waive or vary the rules in exceptional circumstances, such as when a person is prevented from complying with the rules or a Board order within a specified period by circumstances beyond his or her control (**Rule 4**).

#### **Effect of non-compliance**

If a participant fails to comply with the Board's rules or an order or direction of the Board the actions that may be taken by the Board are described in **Rule 5**. The Board may also

order a participant who fails to comply with the rules to pay the costs of another participant and/or part of the Board's costs if that participant's conduct results in undue delays or additional costs for the other parties or the Board (**Rule 38**).

### **Communications with the Board**

All communication with the Board must be made through the registrar. If a participant in an appeal is represented by counsel or an agent the Board's registrar is required to communicate with them through their counsel or agent.

**Rule 7** requires that any document filed with the Board be delivered to all other parties to the appeal. The exception to this rule is the initial Notice of Appeal. Upon receipt of the initial Notice of Appeal the Board will serve this document on the appropriate Respondent.

**Rule 8** requires any participant appearing at any appeal proceeding to provide their full name and contact information to the Board upon request.

**PART 2**  
**SERVING AND FILING DOCUMENTS**  
**(Rules 9 - 11)**

**Address information for service of documents**

Anyone who files any document with the Board must provide sufficient return address information for receiving correspondence and service of documents. Participants in appeals are also required to file with the Board and serve each other with written notice of any change in their return address (**Rule 8**).

**Service of documents**

**Rule 9** sets out how participants in an appeal should serve documents on other participants and specifies when documents are considered to have been served (delivered to other participants).

The Rule also sets out how the Board should serve documents on participants in appeals. Upon receipt, the Board will serve the initial Notice of Appeal on the appropriate Respondent.

**Notice to parties**

**Rule 10** sets out how the Board can provide notice or any document to parties or other persons. Preference is given to communicating via email whenever possible.

## PART 3

### STARTING AN APPEAL

#### (Rules 12 - 14)

A notice of appeal must be filed within **30 days** of the decision being appealed.

#### **Appeals under the Safety Standards Act**

The Board hears appeals of some, but not all, decisions made by safety officers and safety managers appointed under sections 11 and 12 of the *Safety Standards Act*.

Section 49 of the *Safety Standards Act* provides for a review of a safety officer's decision by the appropriate safety manager. The Act requires a request for a safety manager's review to be made in writing within **30 days** of the date of the safety officer's decision. The Act does not require a person to get a safety manager's review before appealing a safety officer's decision directly to the Board, but the Board strongly encourages it since a safety manager's review can often resolve the dispute without an appeal.

The safety manager may confirm, vary or reverse the safety officer's decision or refer the matter directly to the Board. The safety manager's decision must be in writing and must state the reasons for the decision.

A person who is not satisfied with a safety manager's decision can appeal to the Board under section 51 of the Act by filing a Notice of Appeal.

#### **Appeals under the Homeowner Protection Act**

The Board hears appeals of decisions made by the Registrar appointed under section 7 of the *Homeowner Protection Act*. Before appealing a decision of a compliance officer directly to the Board a person must request a review by the Registrar under section 29.1 within **30 days** of the date of the initial decision.

The registrar may confirm, vary or reverse the decision. The Registrar's decision must be in writing and must state the reasons for the decision. The Registrar may refer the matter directly to the Board. If dissatisfied with a decision or order of the Registrar a person can appeal to the Board under section 29.3 of the Act, by filing a Notice of Appeal.

#### **Appeals under the Building Act**

The Board hears appeals of decisions made by the Registrar designated under section 12 of the *Building Act* with respect to administrative penalties issued under section 23 of the *Building Act*. Before appealing a decision of the Registrar directly to the Board a person must request within **30 days** of the date of the initial decision that the Registrar reconsider its decision. The Registrar can confirm, vary or reverse the decision. If dissatisfied with a decision or order of the Registrar a person can appeal to the Board under section 30 of the Act, by filing a Notice of Appeal with the Board.

#### **Deadline for appealing an order or decision**

A Notice of Appeal must be filed within **30 days** of any decision or order being appealed under the *Safety Standards Act*, the *Homeowner Protection Act* and the *Building Act* and

is considered to be filed on the date it is received by the Board or the date specified in **Rule 10.3**. It can be filed in person, by ordinary mail or courier, or by fax or e-mail.

If a person is unable to file an appeal within 30 days of the decision being appealed the Board will consider extending the time limit upon receipt of a written request with reasons, but will only extend the time limit if it is satisfied there are special circumstances that justify the appeal being filed late.

### **Notice of appeal**

The Board has a form that can be used to file an appeal, which can be obtained from the Board's office or website (Form 1– Notice of Appeal). It is not necessary to use Form 1, but the Notice of Appeal must be in writing and contain the information required by **Rule 13**. Upon filing of the Notice of Appeal the Board will serve a copy on the regulator whose decision is being appealed (the Respondent) (Rule 12).

### **What information should be included with a notice of appeal?**

A Notice of Appeal should include only enough information for the Board to decide if it has jurisdiction to hear the appeal. It is not advisable to file all the documentary evidence because there usually are opportunities to clarify or resolve some issues between the parties and reduce the number of necessary documents during the subsequent process. A copy of the decision being appealed must be included with the Notice of Appeal.

### **Deficient notice of appeal**

**Rule 13** sets out the steps to be taken by the Board if a Notice is filed late or does not contain the required information. It should be emphasized that Rule 5 allows the Board to dismiss an appeal if additional information requested by the Board is not filed within the specified time.

### **Jurisdiction**

The Board must have jurisdiction to hear an appeal for an appeal to be considered valid. Some common reasons why the Board would not have jurisdiction are that an appeal was filed late or the governing legislation states that a particular decision cannot be appealed.

The *Safety Standards Act* specifically states that some decisions can not be appealed to the Board. For example, section 32 states that it does not have jurisdiction to hear an appeal of a decision to refuse to issue a variance, while section 33 states that a decision not to enter into an equivalent standards agreement can not be appealed to the Board.

Section 29.3 of the *Homeowner Protection Act* requires decisions of compliance officers to be reviewed by the Registrar appointed under section 7 of the Act prior to appealing to the Board.

Another reason the Board may not have jurisdiction to hear an appeal might be that there are insufficient grounds. Appeals must be based on grounds that the decision being appealed was not made according to the governing legislation.

Additionally, an appellant could request an outcome in the Notice of Appeal that the Board does not have the authority to provide. It does not have discretion to waive the mandatory requirements of the *Safety Standards Act* or the *Homeowner Protection Act*.

## **Stay of Proceedings**

The *Homeowner Protection Act* (section 29), the *Safety Standards Act* (section 54(1)), and the *Building Act* (section 30(4)(b)(iii)) stipulate that an appeal does not operate as a stay (i.e. it does not postpone the effective date of a decision) unless the appeal Board orders otherwise.

If an appellant intends to apply for an order to suspend the operation of a decision until the appeal is decided, the application must be filed with the Notice of Appeal using Form 4 - Application for Board Order (see Rule 27). Copies of Form 4 can be obtained from the Board's office or website.

Section 54 of the *Safety Standards Act* stipulates that the Board does not have the power to order a stay of a decision if the regulating body has applied under section 39 of the Act to the Supreme Court to enforce an order for compliance of the decision.

The Board will serve a copy of the Notice of Appeal (and any accompanying applications for Board orders) on the regulator whose decision is being appealed (the Respondent) Board (**Rule 7**).

## **What happens after a notice of appeal is filed?**

Upon receipt of a Notice of Appeal the Board's staff will register it, check to ensure it complies with Rule 13 and send the appellant a letter acknowledging that the Notice has been filed, including notice of any deficiencies.

If the Notice of Appeal is accompanied by an application for a stay of the decision under appeal the Board may wait for the response to the appeal before deciding whether or not to grant the application. If, in the Board's opinion, circumstances warrant, the Board may require the parties to address the application prior to the normal 14 day time limit for responding to an appeal.

If the Board is concerned it may not have jurisdiction to consider the appeal, the appellant will be invited to make written submissions on why the appeal should proceed **(Rule 14)**

**PART 4**  
**RESPONDING TO AN APPEAL**  
**(Rule 15)**

**Responding to an appeal**

A response to an appeal must be filed within **14 days** from the date the respondent was served with the Notice of Appeal by the Board (**Rule 15**). The Board's Form 2 (Response to Appeal) can be obtained from the Board's office or website. It is not necessary to use Form 2, but the response must be in writing and contain the information required by Rule 15.

The "appeal record" specified by Rule 14 consists of the decision being appealed, the decision-maker's reasons for the decision, any documentary 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;

The respondent is also required to serve a copy of the response on the appellant in advance or on the same day it is filed with the Board (Rule 7).

**What happens after the Response to a notice of appeal is filed?**

The Board will usually arrange an Appeal Management Conference via telephone conference with the appellant and the respondent to obtain further information on the issues.

If the Response includes a Reply to an Application for a stay of the decision under appeal or an application for an order to dismiss the appeal on jurisdictional grounds the Board may invite the appellant to make written submissions on those issues within a specified time. After reviewing the submissions the Board will serve the parties with a written decision with reasons.

If the Board finds it does not have jurisdiction, it will dismiss the appeal accordingly. If the Board finds it has jurisdiction it will proceed with the next step in the appeal, which is usually a further Appeal Management Conference via telephone conference.

## PART 5

### REMOVING, ADDING OR SUBSTITUTING PARTIES AND INTERVENERS (Rules 16 - 17)

#### **Addition of parties and interveners**

The Board may add other parties to an appeal if it considers them to be directly affected by the decision under appeal.

Other persons may be added as interveners in appeals under the *Homeowner Protection Act* and the *Safety Standards Act* if the Board considers they have sufficient interest in the decision under appeal or some expertise which should be represented. Unlike a party, who is directly affected by the decision being appealed and is given full participatory rights, the extent of an intervener's participation is governed by the extent the Board considers that the intervener will assist the Board to appreciate relevant legal, technical, commercial, public interest or other factors necessary to determine a just outcome of the appeal.

A person who wishes to be added to an appeal as a party or an intervener must file a written application using Form 4 - Application for Board Order (see Rule 27). Copies of Form 4 can be obtained from the Board's office or website.

**Rule 16** outlines the factors to be considered by the Board when deciding whether or not to remove, add or substitute a person as a party to an appeal.

**Rule 17** outlines the factors to be considered by the Board when deciding whether or not to grant an application to intervene and sets out limits which may be placed on an intervener's participation.

When deciding if a person should be added as a party or intervener, and what level of participation to allow, the Board will consider the timeliness of the application, any prejudice to the parties, whether the applicant has sufficient interest in the appeal, whether that interest can be adequately represented by another party, the requested level of participation, whether allowing the application will delay or unduly lengthen the proceedings, and any other relevant factors in the circumstances. If the Board grants the application it will advise the parties in writing.

## **PART 6**

### **MANAGEMENT OF APPEALS**

#### **(Rules 18 - 21)**

##### **Appeal management**

“Appeal management” refers to the process used by the Board to move an appeal from beginning to end. The Board may set time limits for each step of the process and may make any other orders to help resolve the appeal.

The process will be designed to fit the requirements of the relevant legislation and the needs of the parties to ensure that it corresponds to the value, complexity and importance of the dispute.

##### **Appeal Management Conferences**

The Appeal Management Conference is one of the tools used by the Board to manage appeals in a quick and cost effective manner. Its purpose is to have a member of the Board discuss with the parties the issues, the likely evidence, the best method of managing the appeal and whether it can be resolved without a hearing. It usually helps the parties clarify and narrow the issues, identify where they disagree and allows the process to run more smoothly and be more focussed.

If a party is not an individual (e.g. a company) an individual with full authority to make decisions for the party must attend.

The Board will schedule an Appeal Management Conference at the earliest date possible after the response is filed by the Respondent. A Board member will conduct the appeal management conference. Decisions about how the appeal will proceed and time limits for each step of the process will be made during the conference. It will typically be conducted by telephone but may be held in-person, or by any other method specified by the Board.

The parties do not need to file all their evidence prior to a conference but they should be prepared to discuss details about their position in the appeal and what evidence they would rely on if the appeal proceeded to a hearing.

The Board may require the parties to provide more information about the appeal; produce relevant documents; provide lists of witnesses or outlines of anticipated evidence. During the conference, the parties should make any requests for information or documents from the other party.

At the conference, the Board may require the parties to participate in early dispute resolution processes to try to reach a mutually agreeable resolution. These processes could involve one or more settlement conferences or mediation sessions and include a neutral evaluation of the merits of a case (see Part 7 of these Guidelines).

If a hearing is set, the Board will schedule the hearing date and set time limits for the parties to serve and file evidence, documents or submissions prior to the hearing.

The Board will also decide if the hearing will be conducted by written submission, in-person or a combination of the two. Where appropriate, the Board will favour hearings by written submission as the most efficient and least costly method of proceeding.

In complex appeals, the Board may direct the parties to serve and file a written statement, within a specified time, to help clarify the issues and the nature of each party's case (**Rule 20**).

The statements will provide the parties with information about each other's case so they can more effectively prepare their cases and respond to the other party. The statements may contain details of the issues, a summary of the evidence and any legal principles involved in the appeal. The Board may direct the parties to include specific information and will provide an opportunity for each party to respond to the statement of the other party.

In certain cases it may be appropriate, with the consent of the parties, for the Board to treat the statements as written submissions in the appeal (**Rule 20**).

The Board may set other requirements at an appeal management conference, such as combining separate appeals if the facts and issues are the same or sufficiently alike (**Rule 21**).

## PART 7

### ALTERNATIVE DISPUTE RESOLUTION

#### (Rules 22 - 25)

The Board encourages the parties to discuss the appeal issues between themselves in an effort to reach a settlement. These discussions can take place at any time and need not be confined to a process facilitated by the Board. Certain processes are uniquely suited to certain forms or stages of disputes; the Board can provide some advice on processes or refer parties to external sources for assistance.

A mutually agreeable solution to some or all of the issues in an appeal may emerge during an Appeal Management Conference. The Board will arrange one or more Settlement Conferences or mediation sessions. Both are collaborative processes in which the parties participate in the negotiation and design of a settlement with the assistance of a third party appointed by the chair or by the parties with the agreement of the chair.

#### **Settlement Conference**

A settlement conference is a meeting of the parties with the assistance of a Board member who will facilitate a discussion to try to resolve the issues in the appeal. The member may go further by suggesting terms on which the appeal might be resolved. This approach can be more efficient and less expensive than proceeding to a hearing. Even if an appeal is not completely resolved collaborative processes can help to resolve at least some of the issues between the parties. Collaborative processes take place in a private, informal setting and may be held in person, by telephone conference or by any other method as the person appointed to conduct them may direct. The person appointed to conduct a dispute resolution process will set timelines for the process in consultation with the parties.

**Rule 22** sets out the powers of a Board member in the context of a settlement conference.

The person appointed to conduct a settlement conference has no power to decide its outcome and the appeal is settled only if the parties agree to a settlement.

Settlement conferences and mediations are confidential and without prejudice to the positions the parties may take in a hearing if a settlement is not reached.

#### **Mediation**

If a party wishes to initiate mediation at any time (other than during an Appeal Management Conference or Settlement Conference) the Board will deliver a Mediation Directive to all parties with a time limit for responding.

If the parties agree, the presiding member will appoint a Board member to conduct a mediation or the parties may agree to appoint a mediator approved by the Board. If an independent mediator is involved the cost of the mediator must be paid equally by the parties unless they agree to some other cost-sharing arrangement. The hourly rates of mediators vary. In general, mediation normally lasts less than one day.

#### **Alternative Dispute Processes Generally**

Parties may not disclose any document or oral information created or presented for the purpose of achieving a settlement unless the other parties consent (**Rule 24**)

The parties are required to sign a Confidentiality Agreement (Form 3) prior to a settlement conference or mediation (**Rule 25**). Copies of Form 3 can be obtained from the Board's office or website.

### **Neutral evaluation**

If a Board member conducts a mediation session or settlement conference the parties may request a neutral evaluation of their case from the member. "Neutral evaluation" means a non-binding assessment of the merits of a party's case. It is particularly useful when one or more parties have unrealistic expectations. In such situations a non-binding, neutral evaluation may prove invaluable as a "reality check". The evaluation is strictly confidential and is not communicated to any other member of the Board. The member making the evaluation will not be designated by the Board to hear the appeal if the appeal goes to a hearing, unless all parties consent.

### **What happens after a settlement conference or mediation?**

If a settlement of all or part of an appeal is reached the Board will order that the appeal or part of the appeal is dismissed or a party may agree to withdraw its Appeal. In this context, dismissal does not refer to a negative assessment by the Board of the merits of the case, but simply to the fact that the appeal or parts of the appeal are no longer before the Board.

If the parties are unable to settle the appeal, the Board will return all documents produced for the settlement conference or mediation to the parties unless they agree the documents should be part of the Board's appeal file (**Rule 22**).

If a member conducts a dispute resolution process and some or all of the issues in an appeal are not resolved, that member may make pre-hearing orders but may not hear the appeal unless the parties consent. An Appeal Management Conference may be held to decide the next steps or the appeal may be scheduled directly for a hearing.

If the parties reach a settlement of all or part of an appeal at any time, they must promptly notify the Board and any interveners and the Board will issue an order that part or all of the appeal is dismissed (**Rule 22**). The parties may file a settlement agreement with the Board at any time, but when an appeal has been scheduled for a hearing it should be filed as soon as possible in order to assist the Board with scheduling.

If the parties wish the Board's dismissal order to include the terms of their agreement they must detail the agreement in writing and submit it to the Board for consideration as a settlement under **Rule 41**.

The Board has a responsibility to make safety considerations paramount, and reserves authority to make an appropriate order in spite of a proposed settlement.

## PART 8

### APPLICATIONS FOR BOARD ORDERS

(Rules 26 - 29)

The parties can apply for a Board order to deal with procedural or substantive matters on which they are unable to reach agreement. Examples include, but are not limited to an order allowing a party to amend a Notice of Appeal or Response, an adjournment, an order to dismiss an appeal and an order to add an intervener.

**Rules 27 and 28** apply to all applications for Board orders except, an application made during a hearing and an application for a summons.

Before applying for an order a party should contact the other parties to find out if they will agree to a request without an order and take any practical steps to resolve the issue.

Applications for Board orders must be filed using Form 4 (Application for Board Order). Copies of Form 4 can be obtained from the Board's web-site or the Board's office. See Rule 9 regarding filing and serving documents and Rule 28 regarding the time limit for parties to file responses to an application for a Board order

**Rule 29** state that Applications for Board Orders are not to be filed with the Board until after the initial Appeal Management Conference has been held in an appeal. Rule 29 does not apply to an application for a stay of a decision under appeal, an application for an extension of time for filing an appeal or an application respecting the jurisdiction of the Board to hear an appeal.

The Board may canvas whether there are any applications parties wish to file at an Appeal Management Conference and may address simple applications within that conference.

When a completed application is filed and the Respondent(s) have filed a response, the Board may issue the requested order, require the participants to attend an Appeal Management Conference, and/or request further information from the participants.

The Board can issue the requested order whether or not all of the parties agree to it. If the Board allows an application it may impose new requirements on the parties, which may include attendance at an appeal management conference; the production of documents or reports; or other terms and conditions to assist with the fair and efficient conduct of the appeal.

**PART 9**  
**HEARINGS**  
**(Rules 30 - 42)**

If the appeal is not settled by other methods (see Part 7) the Board will proceed with a hearing by a panel of members appointed by the chair. For simple appeals a panel may consist of one Board member. For more complex appeals a panel may consist of two or more members chaired by one of the members. The decision of a one-person panel or the majority of panel members is the decision of the whole Board. In the event of a tie, the decision of the panel chair prevails (**Rule 30**). Appeals under the *Building Act* will be heard by the full Board as required by legislation.

**Types of hearings**

The Board has discretion to determine the location of hearings and how they are conducted. It can hold hearings in-person, by telephone or video conference, by written submissions or by any combination of those methods (**Rule 31**).

When considering the type of hearing to be held the Board will give careful consideration to balancing the process to be followed with the needs of the parties and the purposes of the legislation under which the appeal arose and will take into account the value, complexity and importance of the dispute for the public interest.

Hearings will generally be held by way of written submissions unless there are issues of credibility, complex issues that require oral evidence or other circumstances that exert a strong influence in favour of an oral hearing.

**Hearings by written submission**

Holding a hearing by way of written submission is a practical method of hearing an appeal and can reduce costs for the parties. (e.g. the costs of travel to a hearing location). In all cases the Board must be satisfied that this method is practical given the appeal issues and likely evidence.

If the Board decides that an appeal can be heard fairly by way of written submissions it will provide the participants with a schedule including time limits for exchanging their submissions and documents and filing them with the Board. The schedule will be made to ensure that each party, any intervenes are given an opportunity to review and respond to the submissions of the opposing parties. Submissions will normally be scheduled in the following order: (1) appellant's submissions; (2) Respondent's and intervener's submissions; (3) Appellant's submissions in reply.

Copies of all submissions must be served on the other parties and filed with the Board by the dates specified in the Board's rules or as otherwise ordered by the Board.

If the appeal is conducted by written submission the participants are required to present their entire case in writing. All of the evidence, legal authorities and argument that a participant wants the Board to consider must be included.

The Appellant's submissions should contain all evidence and argument in support of the grounds for appeal and explain why the decision being appealed should be changed. The Respondent's submissions should provide all evidence and argument in support of the decision being appealed and explain why the appeal should be dismissed.

Once the deadlines have expired for making submissions a panel of the Board will review them and make a final decision in the appeal. If the panel has questions about any of the material or needs more information it may hold a telephone conference with the participants or ask question of the parties or witnesses or to ask for follow up written submissions before making its final decision.

### **In-person hearings**

If the Board decides a hearing by written submission is not appropriate it will appoint a panel to conduct an in-person hearing.

In-person hearings are usually held by video-link, but in certain circumstances the Board may decide that it is necessary for the parties and the Board's panel to be in the same hearing room. When deciding the location of a hearing the Board will consider the cost to the parties and the Board and whether or not the location is easily accessible to the parties and the Board.

The Board will advise the participants in writing of the date, time and location of the hearing and provide them with time limits for exchanging their documents and filing them with the Board prior to the hearing.

The parties must serve copies of all documents they intend to rely on at the hearing on the other parties and file them with the Board by the dates specified in the Board's rules unless otherwise ordered by the Board.

If the Board allows a participant to present documentary evidence that was not disclosed prior to the hearing, that participant must provide four copies for the Board and a copy for each other participant. If the Board has to make copies of documents because a party did not provide enough copies that party will be required to pay photocopying charges (**Rule 36**).

### **Procedure at a hearing**

Board hearings are less formal than court proceedings but the parties are expected to act respectfully to each other and the Board. Parties can represent themselves or be represented by an agent or counsel.

At an in-person hearing the chair of the Board's panel will begin by identifying the panel members, stating the Board's statutory authority to hear the appeal and identifying the decision that is being appealed. The chair will then invite the parties to introduce themselves for the record.

The chair will review the hearing procedures and address the order in which the parties will present their cases. The participants will be given an opportunity to confirm or clarify their understanding of the matter before the Board and to make any preliminary objections or requests.

The chair will ask for the Appellant's opening statement followed by the Respondent's opening statement.

The Appellant's opening statement should include the grounds for appeal, the remedy (decision) sought, the names of any witnesses to be called and the approximate time required to present the Appellant's case.

The Respondent's opening statement should include the decision sought, the names of any witnesses to be called and the approximate time required to present the respondent's case.

Witnesses at a hearing must take an oath or affirm that their evidence will be the truth (**Rule 36**). Oaths and affirmations have the same legal effect. Whether a person swears an oath or affirms to tell the truth, the person is bound by conscience and law to tell the truth.

The Appellant will proceed first with the presentation of evidence. The Appellant and any witnesses may be cross-examined by the Respondent.

The Respondent will proceed next. The Respondent and any witnesses may be cross-examined by the Appellant.

Members of the panel may ask the witnesses questions at any time. New information given in response to questions asked by the panel is subject to re-examination by the parties.

The Appellant may call "reply evidence" (require a witness to respond to evidence provided by the other parties);

At the conclusion of all the evidence the parties will present a closing statement in which they may wish to suggest alternatives for the panel to consider when making its decision. The order of presentation is as follows: (1) Appellant; (2) Respondent; (3) any intervener (if allowed by Board order); (4) Appellant's reply.

In some cases the chair will allow, or require, that the parties make their closing submissions to the panel in writing. No new evidence will be accepted in the closing statement.

### **Objections**

If a party wishes to object to something in the hearing (e.g. questions or evidence) that party may raise an objection. A party making an objection must state the basis for that objection. The Board will provide the other party(s) with an opportunity to respond before making a decision on the objection.

### **Decision**

Following the hearing, the panel will prepare a written decision with reasons (see Part 10 of these guidelines). Occasionally, the panel will provide oral reasons with more detailed written reasons to follow.

### **Interpreters**

Parties who intend to use an interpreter must notify the Board prior to a hearing. The interpreter must be competent and must swear or affirm that they will interpret accurately (**Rule 33**).

### **Public proceedings**

Subject to **Rule 34** oral hearings are open to the public and the Board must provide reasonable public access to documents submitted in a hearing and decisions of the Board.

**Rule 35** provides that Board proceedings may be transcribed or recorded at the Board's discretion and governs the validity, release and cost of any transcription or recording made by the Board.

### **Evidence in a hearing**

The Board has no evidence before it except the evidence provided by the parties. Every appeal is a new proceeding and provides the parties with a fresh opportunity to present evidence in support of their case.

Evidence is the material that is submitted by the parties to establish the factual basis for their case. Generally, it provides the proof of the issues in dispute and can be provided by the testimony of witnesses, by documents, by photographs or by physical objects.

The Board follows an adversarial rather than inquisitorial model and must make its decision on the basis of evidence put before it by the parties. It can accept evidence that would not necessarily be accepted in a court - as long as it is relevant to an issue in an appeal. Evidence is relevant if it is helpful in answering a question the Board must consider in making a decision. The Board must consider all the relevant evidence before it and decide which evidence it considers most relevant and reliable. The Board may accept or reject all or part of a party's evidence.

### **Expert evidence**

Expert evidence is evidence that expresses an opinion from someone who is qualified by education, training or experience to give an opinion in a particular subject. Non-experts are not entitled to give opinion evidence.

Prior to a hearing, participants in an appeal must serve on all other participants and file with the Board a copy of any expert report they intend to present at a hearing. If a participant intends to present expert opinion evidence without a full report, that participant must serve the other participants and file a statement of the expert's opinion together with the facts upon which it is based and the expert's qualifications.

**Rule 37** sets out time limits for participants to serve and file expert reports prior to a hearing. The purpose of exchanging expert reports in advance of the hearing is to give each participant advance notice of any opinion evidence from a qualified expert. This also provides the participants with an opportunity to review and consider the opinions and facts upon which the opinion is based and to prepare questions to ask at the hearing. The Board will not usually permit a party to present an expert opinion if the expert's evidence was not produced in advance of the hearing.

### **Other documents**

Other documents that may provide valuable evidence include licences, certificates of competency or qualification, permits, inspection reports and contractor authorization forms. Photographs may assist in showing the extent of regulated work that has been done or that needs to be done. Other means of proof include correspondence, maps, charts, graphs, affidavits, studies, etc. **Rule 36** sets out time limits for participants to serve and file documentary evidence other than expert evidence.

## Organizing the relevant documents

The documents which the parties intend to rely on in a hearing should be organized to provide the other parties and the Board with the simplest way to review them. If there is a large volume of documents the parties should consider using the following format:

### A. Evidence:

1. Table of contents
2. Opening comment
3. Relevant documents in chronological order, beginning with the earliest documents
4. (in-person hearings only) List of witnesses (if applicable) in alphabetical order, including the estimated amount of time the Appellant requires to examine each witness
5. Witness statements (if applicable) in alphabetical order. This may be a written statement by the witness or a summary of the evidence the witness is expected to provide
6. Expert reports (if applicable) in alphabetical order

### B. Legal Authorities:

This binder should contain a table of contents and (in alphabetical order) a copy of each legal authority the party intends to refer to at the hearing. Passages the party intends to reference should be highlighted.

## Order to compel a witness and compel disclosure

Arranging for the attendance of witnesses and the production of evidence at a hearing is the responsibility of the parties. If a proposed witness refuses to attend a hearing voluntarily or refuses to testify a party can apply to the Board for a summons requiring a person to appear as a witness at a hearing on a specific date or produce for the Board or another party a document or other thing that is admissible and relevant to an issue in the appeal.

**Rule 38** sets out the procedure for applying for a summons and outlines the factors to be considered by the Board in deciding whether or not to issue a summons or (upon written application by a person who is summoned) cancel or vary a summons. The Board may make an order for the payment of all or part of the witness' costs to attend the hearing.

For Appeals under the *Homeowner Protection Act* or the *Safety Standards Act* section 49 of the *Administrative Tribunals Act* provides that if the person named in a summons fails to comply with it that person is, on application by the Board to the Supreme Court, liable to be committed for contempt of court.

## Costs

**Rule 36** outlines the conditions in which the Board might order an award of costs. The party who is successful in an appeal is not automatically entitled to an award of costs. However, if anything is done or omitted improperly or unnecessarily, by or on behalf of a participant in an appeal, the Board may order a participant to pay part of the Board's costs or the costs incurred by another participant resulting from the act or omission for

appeals under the *Homeowner Protection Act* or the *Safety Standards Act*. The Board can make such an order on its own initiative or on the application of a party.

### **How to apply for costs**

At a hearing under the *Homeowner Protection Act* or the *Safety Standards Act*, the panel may take evidence on the expenses incurred and hear submissions on the party or intervener's entitlement to costs. Alternatively, the panel may hear the application for costs on another date or deal with it through written submissions.

The Board's Form 4 (Application for A Board Order) must be used to apply for an order for costs. Copies of Form 4 can be obtained from the Board's web-site or the Board's office.

The application must contain a detailed description of unnecessary costs caused by an act or omission of another party or intervener. The application must include sufficient information to enable, in the opinion of the Board, any reasonable person to determine the reasonableness of the claim. A party or intervener will be given the opportunity to be heard on the matter before the Board issues an order against that party or intervener for the payment of costs.

The Board may award costs that relate only to a particular issue or part of an appeal or may exclude from an award certain costs that relate to a particular issue or part of an appeal. It will consider the circumstances of each case when deciding whether to make an order for payment of costs and when determining the amount of such an order

If costs are awarded to a party or intervener the Board will allow those costs, or a portion thereof, that were proper or reasonably necessary to conduct the appeal based on a schedule adopted by the Board from time to time and published on the Board's web-site as an appendix to the Board's Rules of Practice and Procedure. See schedule 1, Guidelines for Determining Party Costs.

On its own initiative, if a party's conduct has been improper, vexatious, frivolous or abusive the Board may order a party to pay all or part of the Board's costs. The Board will provide the party to be heard on the matter before ordering costs.

The amount of an order for payment of the Board's costs will be based on the amounts in schedule 2, Estimate of Board Costs. Schedule 2 includes estimates of the costs incurred by the Board for various processes. The amount of an award will be that which the Board determines to be reasonable and adequate in the circumstances of a particular case.

These guidelines are intended to provide guidance to parties and alert them to the expectations and requirements of the Board. They are not intended to fetter or restrict the Board's discretion in making decisions on costs. The Board must consider each appeal on a case by case basis and exercise its discretion whether or not to award costs within the context of the principles of natural justice and administrative law.

Section 47 of the *Administrative Tribunals Act* provides that an order for an award of costs, after filing in the court registry, has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it and all proceedings may be taken on it as if it were an order of the court.

## **Adjournments**

The Board can adjourn a hearing at any time on its own initiative. If a party wishes an adjournment the application must be filed at the earliest practicable time prior to a scheduled hearing or other appeal proceeding; however an adjournment may not always be possible. The Board will not grant an adjournment unless there is good reason and the adjournment will not cause undue prejudice to the other parties. The Board also wants to avoid the extra costs to the parties (and the Board) that are often associated with delays and the cancellation of hearing facilities.

**Rule 40** sets out the procedure to be followed when applying for an adjournment, including the factors the Board must take into account when considering whether or not to grant an adjournment and the actions it may take if a hearing or other appeal proceeding is adjourned.

## **Settlements of all or part of an appeal**

**Rule 41** sets out the process to be followed if the parties wish the Board's order to include the terms of any agreement in a dismissal order.

## **Withdrawals**

An appellant may withdraw an appeal at any time by filing a notice of withdrawal. Upon receipt of a notice of withdrawal, the Board will issue an order confirming acceptance of the withdrawal and any hearing will be cancelled.

**Rule 42** sets out the procedure to be followed by the Appellant and outlines the circumstances in which the Board may decide that an appeal has been withdrawn in the absence of a Notice of Withdrawal.

If a hearing has been scheduled the notice of withdrawal should be made at the earliest opportunity to avoid the potential for incurring costs. If a statement of withdrawal is filed without enough time to allow the Board and the other parties to avoid hearing costs the Board may request submissions from the other parties with respect to costs and the appellant may be required to pay part of the costs incurred by the Board and the other parties.

**PART 10**  
**POST- HEARING MATTERS**  
**(Rules 43 - 45)**

**Decisions**

The Board's final decision will be made in writing with reasons and is effective the date it is issued unless otherwise specified by the Board. The Board will send a copy of its final decision to each party and intervener in the appeal unless the participants are so numerous it is impractical to do so, in which case the Board will provide the participants with a notice advising where copies of the decision may be obtained.

**Decisions, orders and rulings of the Board**

**Rule 43** requires the decision to be made in writing, with reasons. It sets out the process for parties to apply for a clarification of the decision and establishes that the Board may correct accidental errors or omissions. The Rule also requires the Board to provide public access to its decisions and outlines how the Board can provide notice of its decisions.

**Enforcing decisions**

Section 54 of the *Administrative Tribunals Act* stipulates that a decision filed with the Supreme Court of British Columbia by a party in an appeal or person designated in the final decision has the same force and effect as a judgment of the Supreme Court of British Columbia. **Rule 44** requires the person filing the decision with the Supreme Court of British Columbia to give notice of the filing to the Board.

**Appeals from a Board decision**

Section 60 of the *Safety Standards Act* stipulates that Board decisions are final and conclusive. However, Board decisions are subject to proceedings under the *Judicial Review Procedure Act*.

**Disposal of Board records**

**Rule 45** sets out records management requirements for the Board's appeal files.