



RULES OF PROCEDURE FOR OHS APPEALS

If you are a party to an OHS appeal filed before December 1, 2021, a previous version of the OHS Rules of Procedure may apply. Please contact the Appeal Body at ALRB.OHSAPPEALS@gov.ab.ca to request a copy of this document.

PART I: AUTHORITY

1. Pursuant to section 45(1) of the *Occupational Health and Safety Act*, SA 2020, c O-2.2 (the “Act”), the Labour Relations Board is the appeal body (the “Appeal Body”) for the purposes of the Act.
2. Section 46(9) of the Act enables the Appeal Body to establish rules of procedure for the appeals it hears under the Act (the “OHS Rules”).
3. Where the OHS Rules conflict with the Act, the Act shall prevail.

PART II: DEFINITIONS

4. In the OHS Rules:
 - (a) “Appeal Body” means the Labour Relations Board (the “Board”), pursuant to section 45(1) of the Act.
 - (b) “Appeal Panel” means those assigned by the Chair to hear an appeal and may consist of:
 - i. three members of the Appeal Body pursuant to section 46(2) of the Act;
or
 - ii. the Chair or a Vice-Chair sitting alone pursuant to section 46(4) of the Act.
 - (c) “Appellant” means an Appellant as described in Rule 5.

- (d) “Chair” means the Chair of the Labour Relations Board as designated under section 8(3) of the *Labour Relations Code*;
- (e) “Decision under Appeal” means the document containing the order, notice of administrative penalty, cancellation, suspension, record, report, or variance being appealed;
- (f) “Director of Settlement” means the Director of Settlement of the Board as appointed under 1(d) of the Board’s Rules of Procedure;
- (g) “Minister” means the Minister referred to in section 45(4) of the *Act* and defined in section 1(aa) of the *Act*.
- (h) “OHS” means Alberta Occupational Health and Safety;
- (i) “Record” means all evidence and records before OHS at the time of making the order, notice of administrative penalty, cancellation, suspension, record, report or variance being appealed from that are relevant to the Decision under Appeal;
- (j) “Respondent” means a Respondent as described in Rule 6.
- (l) “Vice-Chair” means a Vice-Chair of the Alberta Labour Relations Board as designated under section 8(3) of the *Labour Relations Code*.

PART III: PARTIES TO OHS APPEALS

5. The following persons are Appellants for the purposes an appeal under the Act and the OHS Rules:
 - (a) For an appeal under section 45(2)(a) of a compliance order, stop work order or stop use order, the Appellant is the person to whom the order was issued;
 - (b) For an appeal under section 45(2)(b) of a notice of administrative penalty, the Appellant is the person who is given notice of the administrative penalty;
 - (c) For an appeal under section 45(2)(a) and (b) of a Director’s variance of an order issued under section 38, 39 or 40 or of a Director’s variance of a notice of an administrative penalty under section 44, the Appellant is the person in relation to whom the order or notice of administrative penalty was varied under section 41;
 - (d) For an appeal under section 45(2)(c) of a cancellation or suspension of a license, the Appellant is the person whose license is suspended or cancelled;

- (e) For an appeal under section 45(2)(d) of a finding in a record, the Appellant is any person who has received a record under section 17(15);
 - (f) For an appeal under section 45(2)(e) of a finding in a report, the Appellant is the person who received a report under section 19(2);
 - (g) For an appeal under section 45(2)(f) of an order, the Appellant is any person who has received an order under section 19(8).
6. The following persons are Respondents for the purposes of an OHS Appeal:
- (a) OHS is the Respondent for appeals under section:
 - i. 45(2)(a) of compliance orders, stop work orders and stop use orders;
 - ii. 45(2)(b) of administrative penalties;
 - iii. 45(2)(a) or (b) of a Director's variance of an order or administrative penalty;
 - iv. 45(2)(c) of a cancellation or suspension of a license; and
 - v. 45(2)(f) of an orders issued pursuant to 19(8).
 - (b) For appeals of a finding in a record under section 45(2)(d), the Respondent(s) is any person other than the Appellant who received a record under section 17(15);
 - (c) For appeals of a finding in a report under section 45(2)(e), the Respondent(s) is any person other than the Appellant who received a report under section 19(2);
7. For the purposes of Rule 6(b) and 6(c) and appeals under section 45(2)(d) and 45(2)(e) of the Act, OHS is a party to the appeal, but, unless the Appeal Body otherwise orders, its scope of participation is limited to presenting the Record, and providing information about the Act and OHS policies and procedures.
8. The Minister is a party to all appeals under section 45 of the Act, and has the same status and rights as any other party. Upon receipt of a Notice of Appeal, the Appeal Body will notify the Minister of the appeal and provide the Minister with a copy of the Notice of

Appeal. Where the Minister expresses an intention to participate in the appeal, the Minister must provide a Response in accordance with Rule 27.

PART IV: SERVICE OF DOCUMENTS ON THE APPEAL BODY AND PARTIES

9. Appeals and submissions may be served upon the Appeal Body:

By mail or delivery to:

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

or

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

By fax to:

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

By e-mail to:

ALRB.OHSAPPEALS@gov.ab.ca

10. Notices of Appeal or submissions received after 4:00 pm on a business day will be deemed to have been received at 8:15 AM the following business day. Notices of Appeal and submissions received on a day that is not a business day will be deemed to have been received at 8:15 AM on the following business day.
11. Any appeal or submission sent by e-mail must be in the form of an e-mail attachment. E-mail attachments must be legible. Documents that are illegible or cannot be opened by the Appeal Body will not be accepted.

12. Parties must provide the Appeal Body with an address for service of documents in the appeal, and may provide an e-mail address for service. Service of any document upon the party is deemed to occur upon the earliest of:
 - (a) delivery of the document to the address for service;
 - (b) seven days after mailing of the document to the address for service; or
 - (c) the time of transmission of the document to the e-mail address for service.
13. The Appellant is not required to serve the Notice of Appeal on any other party. The Appeal Body will serve copies of the Notice of Appeal upon all Respondents, the Minister, and any other parties.
14. Parties to an appeal are responsible for serving copies of any other material submitted to the Appeal Body upon all other parties to the appeal, including the Minister, unless the Minister has notified the Appeal Body in writing of its intention not to participate in the appeal.

PART IV: STAYS OF ORDERS AND ADMINISTRATIVE PENALTIES

Orders

15. Persons who commence appeals under sections 45(1)(a), (c), (d) or (e) of the Act may apply for a stay of the order, cancellation, suspension, record or report appealed from, pending the appeal to the Appeal Body. Applications for stays must be sent in the form of an email to ALRB.OHSAPPEALS@gov.ab.ca.
16. The Chair or a Vice-Chair will be assigned by the Chair to hear the application for a stay. The Chair or Vice-Chair assigned will determine the procedure to be followed to obtain information sufficient to render a decision on whether a stay should be granted.

Administrative Penalties

17. Pursuant to section 45(8) of the Act, payment of administrative penalties is automatically stayed upon commencement of an appeal of the penalty until such time as the Appeal Body renders its decision or the appeal is withdrawn or deemed to be withdrawn.

PART V: FILING THE APPEAL AND PRELIMINARY PROCESSES

18. An Appellant must file Notice of Appeal using the form and in the manner established by the Appeal Body.
19. The Notice of Appeal must contain:
 - (a) the Appellant's contact information, including a current email address and mailing address;
 - (b) a statement of when the Appellant was served with or received notice of the Decision under Appeal;
 - (c) the grounds of appeal and what relief is requested;
 - (d) a copy of the Decision under Appeal must be attached to the Notice of Appeal; and
 - (e) where an Appellant seeks to introduce new evidence, a description of that evidence, including a list of anticipated witnesses, where applicable.
20. Upon receipt of the Notice of Appeal, the Appeal Body will notify the Respondent(s), the Minister, and any other parties to the appeal.
21. The Notice of Appeal must be received by the Appeal Body within 30 days from the date the Appellant was served with or received notice of the Decision under Appeal.
22. Where it appears that a Notice of Appeal is filed after 30 days from the date the Appellant was served with or received notice of the Decision under Appeal, the timeliness of an appeal may be raised by:
 - (a) the Director of Settlement by providing a letter to all parties; or
 - (b) any Respondent in a Respondent Statement or an application for summary dismissal under Rule 33.
23. Where the timeliness of appeal is raised under Rule 22, the Appellant, Respondent(s) and other parties to the appeal will be invited to provide brief written submissions on the timeliness of the appeal, and the Chair or a Vice Chair shall make a ruling on timeliness.

24. OHS or its agent shall file the Record concerning the Decision under Appeal. The Record must be provided to the Appeal Body within 15 business days of the date of the Notice of Appeal.
25. The Record must be paginated and must contain an index that clearly identifies each record, and references the corresponding page number(s) for that Record. Where a Record is submitted as a PDF document, each Record must be bookmarked and each bookmark must be clearly labelled.
26. For OHS appeals where OHS is the Respondent under Rule 6(a), OSH must also file a Respondent Statement using the form and in the manner established by the Appeal Body, within 15 business days of the date of the Notice of Appeal.
27. Respondents in appeals under Rule 6(b) and 6(c), and the Minister where the Minister intends to participate in an appeal, must file a Respondent Statement, using the form and in the manner established by the Appeal Body, within 10 business days after OHS provides the Record.
28. The Appellant may file a Reply within 10 business days of the date of the Respondent Statement.
29. Hearings and decisions of the Appeal Body are public. As a result, filed documents and evidence may become public and may be referred to in the Appeal Body's decisions. The Board's decisions are reported on the Appeal Body's website and may be reported by other legal decision reporting services.
30. In exceptional circumstances, where the disclosure of an individual's name would create a demonstrable safety risk or adversely impact the individual's privacy, for example, where the issues in the appeal require the disclosure of sensitive personal or health information, that individual may request the Appeal Body not identify them by name in a decision. Applications of this nature should be made when a Notice to Appeal or Respondent Statement is filed, or otherwise be raised as a preliminary matter. The Appeal Body also has discretion not to publish the names of individuals in a decision where the Appeal Body determines, in accordance with this Rule, it is appropriate to proceed in this manner.

31. Under section 45(5)(g) *Act*, and whether or not an application is made under Rule 32, the Appeal Body may reject an appeal summarily where it is of the opinion that it is without merit, frivolous, trivial, vexatious, filed with improper motives, or otherwise an abuse of process. Examples of appeals that may be determined to lack merit include, but are not limited to:
- (a) The appeal is not within the Appeal Body's jurisdiction; or was not served on the Appeal Body within the 30-day period referenced in section 45(3) of the *Act*;
 - (b) The Notice of Appeal is incomplete or, based on the information it contains, has essentially no chance of success;
 - (c) Where the original event that gave rise to the complaint is substantially dated, moot, or where any order of the Appeal Body would have little practical effect, and
 - (d) any other basis whereby the Appeal Body determines that the appeal is without merit and should be summarily rejected.
32. A Respondent or other party to an appeal under section 45(2)(a), (b), (c), (d) or (f) may make an application to reject an appeal summarily under 45(5)(g) of the *Act*, and upon receipt of this application, the Chair shall assign the Chair or a Vice-Chair sitting alone as an Appeal Panel to determine whether there is any basis to summarily reject the matter.
33. Respondents applying under Rule 32 must provide written submissions setting out the basis for the application. The other parties to the Appeal will have the opportunity to provide written submissions in response to the application, and these submissions are due 10 business days from the date of the Respondent's submissions.
34. The Appeal Body may also exercise its summary dismissal powers under section 46(5)(g) of the *Act* in circumstances where an Appellant fails to participate in the appeal or fails to remain in contact with the Appeal Body.

VI: CONDUCT OF OHS APPEALS

35. Appeals under section 45(2)(e) of the *Act* of findings of a report issued under section 19(2) will proceed by way of a preliminary review process as follows:

- (a) The Chair will appoint an Appeal Panel in accordance with Rule 4(b) to conduct a preliminary review of the Notice of Appeal, the Record, the Respondent Statement, and any Reply filed by the Appellant.
 - (b) Where, upon conducting a review under Rule 35(a) it is apparent that the appeal lacks merit or otherwise satisfies any of the grounds for summary rejection under Rule 31 or section 45(5)(g) of the Act, the Appeal Body may dismiss the appeal without referring it to a hearing.
 - (c) Where, upon conducting a review under Rule 35(a), an appeal is not summarily rejected under Rule 31 or section 45(5)(g) of the Act, the appeal shall proceed in accordance with Rule 36.
- 36. Subject to Rule 35, Part VII of the OHS Rules, or as otherwise determined in the Appeal Body's discretion, all appeals shall be conducted entirely by written submissions, without an oral hearing. The parties' written submissions should contain argument on the standard of review and the facts and issues raised in the appeal.
 - 37. The Appellant's written submissions must be filed within 10 business days of the request by the Appeal Body.
 - 38. The Respondent's written submissions must be filed within 7 business days after receiving the Appellant's written submissions.
 - 39. The Appellant may file a rebuttal submission addressing the Respondent's submission within 5 business days of receiving it.
 - 40. Parties' submissions shall be as concise as possible, and should not exceed 3000 words.

PART VII: APPEALS INVOLVING NEW EVIDENCE

- 41. Unless otherwise determined in the Appeal Body's discretion, or unless Rule 43 applies, appeals will only be conducted by oral hearing in circumstances where the Appeal Body determines that the appeal involves new evidence.
- 42. As appeals to the Appeal Body are based only upon the Record, new evidence will only be permitted in exceptional circumstances where it is directly relevant to the issues under appeal, would make a material difference to the outcome of the case, and was not readily

available with ordinary diligence at the time the matter under appeal was decided. A party seeking to introduce new evidence may apply to the Appeal Body for a determination of whether the new evidence will be permitted. Where applications for new evidence are dismissed, the appeal shall proceed in accordance with Rule 36-40, or as otherwise directed by the Appeal Body.

43. Where an appeal involves new evidence, but the evidence is not *viva voce* in nature or does not otherwise require witnesses, and where there is no dispute regarding the admissibility of the evidence, the Appeal Body may direct that the appeal proceed via written submissions.
44. Where an appeal is proceeding by oral hearing, the Appeal Body will select a date and location for the oral hearing after consultation with the parties. In-person hearings will take place at the Board's offices in either Edmonton or Calgary. Hearings that are conducted remotely using the Zoom platform are governed by the Board's Guidelines for Remote Proceedings.
45. Except as otherwise ordered by the Appeal Panel, the parties to an appeal will generally be heard in the following order: (i) Appellant (or representative), (ii) Respondent (or representative), (iii) the Minister, where the Minister is participating in the appeal, with closing statements in the reverse order.
46. For appeals under Rule 6(b) and 6(c) where OHS is a party but not a Respondent, the OHS officer or agent of the regulator may present first to assist the Appeal Body in understanding the contents of the Record, any investigation conducted, and address any questions the Appeal Body may have about the Act or OHS's policies procedures.
47. Where new evidence is being presented, parties shall exchange any records they wish to present at the hearing at least two weeks in advance of the hearing. Parties shall bring at least four (4) copies of any records to the hearing to be provided to the Appeal Panel.
48. While the Appeal Body is not bound by the formal rules of evidence applicable in the courts, the Appeal Body has the same power as is vested in the Court of Queen's Bench of Alberta for the trial of civil actions to:
 - (a) summon and enforce the attendance of witnesses;
 - (b) compel witnesses to give evidence under oath or otherwise;
 - (c) compel witnesses to give evidence in person or otherwise, and
 - (d) compel witnesses to produce any record, object or thing that relates to the matter being heard.

49. Parties seeking to have the Appeal Body compel the attendance of witnesses or the production of documents shall file an Application for a Notice to Attend / Notice to Attend and Produce with the Director of Inspection in the form required by the Appeal Body. Issues concerning the issuance of a Notice to Attend / Notice to Attend and Produce, and any dispute concerning this Rule, may be determined by the Chair or a Vice-Chair.
50. An application to the Appeal Body for an order to issue a notice to attend or a notice to attend and produce documents for a hearing before the Appeal Body shall:
- (a) state why the notice is required, and
 - (b) describe any document or class of documents sought to be produced in sufficient detail that the person to whom the notice is directed may identify and produce the requested documents without undue difficulty.
51. A notice to attend or a notice to attend and produce documents directed to an individual shall be personally served on the witness.
52. A party may apply for a notice to attend and produce documents to issue in the name of a corporation, trade union, or employer's organization.
53. Service may be affected pursuant to any method described in Part III of the Board's Rules of Procedure, and may also be affected by email where the parties have previously corresponded via email. When service is affected via email, it is deemed to be affected at the time of transmission unless it is proven that the addressee did not receive it.
54. Unless otherwise agreed between them, the party serving a notice under this rule shall provide to the witness in advance of the hearing:
- (a) conduct money of \$25.00 for each day, or any portion of that day, that the party requires the person's attendance, and
 - (b) transportation arrangements to and from the hearing or, in its place,
 - i. an allowance for air, bus or train fare by the most direct route, or
 - ii. mileage costs for private vehicle use at \$0.43 per kilometre, and
 - iii. if necessary, arrangements for overnight lodging of reasonable quality or an allowance of \$110.00 per night, and

- iv. a meal allowance of \$8.50 per breakfast, \$10.75 per lunch and \$19.20 per supper.

VII: WITHDRAWAL AND ABANDONMENT OF APPEALS

- 55. The Appellant may withdraw an appeal at any time before the Appeal Body's decision is released by providing written notice to the Appeal Body.
- 56. Appellants and Respondents and any other parties to an appeal are responsible for ensuring communications relating to the appeal will be received at the contact information and address(es) for service provided to the Appeal Body, and must immediately advise the Appeal Body of any change of contact information.
- 57. If the Appellant, at any time in the process, cannot be contacted, fails to adequately respond to communications from the Appeal Body within a reasonable time, or fails to reasonably cooperate in moving the appeal forward, the Appeal Body may deem the appeal abandoned and reject it summarily in accordance with Rule 34.
- 58. If a Respondent or other party fails to respond to the Appeal Body within a reasonable time or otherwise participate in an appeal, the appeal may proceed and be decided without further notice to the Respondent or the other party.

PART VIII: ADJOURNMENTS AND EXTENSIONS

- 59. Any request for an adjournment of an oral hearing or for an extension of time to file written submissions shall be sent in the form of an email sent to ALRB.OHSAPPEALS@gov.ab.ca as soon as possible with detailed reasons for the request.
- 60. The Director of Settlement, or the Director of Settlement's designate, may grant extensions of time for filing written submissions. Requests for adjournment of hearings will be considered by a Chair or Vice-Chair.
- 61. Adjournments are not granted as of right, and will rarely be granted on a date close to, or during, an oral hearing in the absence of strong and compelling grounds. The Appeal Body will consider the reasons for the request, the timeliness of the request, the position of other parties, any prejudice to any person, the interests of effective and efficient

administration of justice, procedural fairness to all parties, and the regulatory objectives of the Act.

62. Where an adjournment of an oral hearing may cause inordinate delay, in appropriate cases the Appeal Body may direct the appeal be conducted by written submissions.

PART IX: GENERAL

63. The Appeal Body may, where it considers it necessary to avoid a miscarriage of justice, relieve against the failure of any person to comply with these Rules and may make such direction in respect of the non-compliance as it deems appropriate.
64. Notwithstanding the timelines contained in these Rules, the Appeal Body has discretion to shorten these timelines or otherwise expedite an appeal where, in the opinion of the Appeal Body, it is necessary from a public interest standpoint to do so. Where the Appeal Body decides an appeal should be expedited, it will notify the parties and schedule a Case Management meeting.
65. Parties should indicate on the Notice of Appeal of Respondent Statement Form whether any accommodations are required, such as language or sign interpreters if the Appeal Body directs an oral hearing.