

ALBERTA TRANSPORTATION SAFETY BOARD
RULES OF OPERATION

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GENERAL

Board Purpose

The Board is part of the Ministry of Alberta Transportation but it is separate from the Department of Transportation. Through its Chair, the Board reports directly to the Minister.

The Board deals with matters relating to the safe use of Alberta roadways and the safe operation of provincial railways.

The Board's role is to hear appeals of decisions or actions made by the Registrar under the *Traffic Safety Act*, and the Railway Administrator under the *Railway (Alberta) Act*. The Board also considers matters referred to it by the courts, the Minister, the Registrar and the Railway Administrator, or on its own initiative.

Scope of Rules

These Board Rules generally apply, however, where there is a statute or regulation that has a different rule, that regulation or statute applies instead. The Board governs its own process and has control over its proceedings.

Definitions

Applicant	any person seeking a review, Hearing, appeal, reconsideration, interim relief, or any other kind of application allowed to be heard, including applications by intervenors and objectors.
Board	means the Alberta Transportation Safety Board as established by Section 22 of the <i>Traffic Safety Act</i> .
Business Days	days of the week excluding Saturdays, Sundays and Holidays.
Chair	the Chair of the Alberta Transportation Safety Board, as designated by the Lieutenant Governor in Council, pursuant to section 23 of the <i>Traffic Safety Act</i> .
Hearing	any kind of application the Board is authorized to hear, including an application for a review, Hearing, appeal or reconsideration.
Party/Parties	direct Party or Parties as well as intervenors and objectors.
Presiding Officer	a member of the Board charged with overseeing a particular Hearing.

PRE-HEARING PROCEDURES

Applications

An Applicant must file an application with the Board. The application must be in the form specified by the Board, accompanied by any necessary fee, and completed to the satisfaction of the Board. In the case of an objection or intervention, the application must also include proof that the original Applicant was served with a copy of the objection or intervention.

An appeal made under sections 35, 36, 37, 38, 39, 39.1, 40, 41, 42, 43 and 44 of the *Traffic Safety Act* must be made within 30 days of receipt of the decision that is being appealed. Appeals made under section 2 of the Inspection Station and Inspection Technician Appeal Regulation AR 306/2002 must be made within 30 days of receipt of the decision that is being appealed. Appeals made under the *Railway (Alberta) Act* should be made within 30 days of receipt of the decision.

Request for Additional Information

The Board may require an Applicant to provide additional material or information to the Board, and may specify how it is to be submitted.

If an Applicant does not provide the additional material or information required, the Board may refuse to consider the application until the material or information is provided.

Dismissal of Applications, including Objections and Interventions

The Board has the power to refuse to consider an application, including an objection or an intervention, and treat it as invalid if:

- The Board considers the application to be without merit;
- the person who submitted the application has not complied with a request from the Board for additional information or materials under these Rules;
- it has determined that the Applicant does not have standing or the Board does not have jurisdiction; or,
- for any other reason the Board considers that the application is not properly before it.

If the Board refuses to consider an application, the Board must notify the Applicant in writing as soon as practicable after the decision is made, stating its reasons.

Notice of Hearing

The Board must give the Applicant notice of the Hearing.

The Board must also give notice to any other affected Parties of which it is aware, including the date by which objectors and intervenors must file their applications with the Board.

Notices must be served within a reasonable amount of time before the Hearing, either by mail or by providing access to the notice through the Board's website, as the Board deems appropriate.

Notices must be in writing or provided electronically and state the date, time, place and purpose of the Hearing. Notices must also include copies of, or reasonable access to, all relevant documentation in the Board's possession, which it will be considering at the Hearing.

Objections and Interventions

Any person who wishes to make representations about the effect on the public interest of a decision or recommendation of the Board may make an application to file an intervention with the Board.

Any person who may be directly affected by a decision or recommendation of the Board may make an application to file an objection with the Board.

Public Hearing

All Board Hearings are open to the public, unless any Party to the Hearing makes an objection, in which case the Board will determine whether the Hearing is open to the public, on a case-by-case basis.

The initial applicant will pay the cost of the Hearing room if a special venue is required. The Board will have final approval of the selected Hearing room.

Opportunity to be Heard

The Board must endeavour to give the Applicant an opportunity to be heard, or otherwise deal with the matter, within 30 days of receiving the application and all required supporting documentation.

Interim Relief

A Party may apply for interim relief, including a stay, relating to an application arising under the *Traffic Safety Act* or the *Railway (Alberta) Act*.

An application for interim relief, including a stay, must be in writing in a format acceptable to the Board, be filed with the Board and served on all Parties to the proceedings.

The Board may grant interim relief, including a stay, at its discretion, having heard from all affected Parties who wish to make representations.

Consideration of a Matter without Oral Hearing

With the consent of the Parties concerned, the Board may consider a matter without holding an oral Hearing. In this case, all information concerning the matter being considered must be submitted in writing.

Withdrawal from Proceedings

Anyone who withdraws an application, objection or intervention before a formal Public Hearing starts must:

- serve the Board and the other Parties to the matter with a notice of withdrawal not later than 7 Business Days before the start of the Hearing; and
- as soon as possible, provide the Board with proof, in writing or in a form acceptable to the Board, that the other Parties have been served with a withdrawal notice.

Any person who withdraws or serves notice later than 7 Business Days before the start of the Hearing may be required to pay reasonable costs.

HEARING PROCEDURES

Conduct of the Board

A Board member who is aware of any circumstance that might lead a reasonable person to think that the Board member might not deal with any matter before the Board in an impartial way, must raise the issue with the Presiding Officer. The Presiding Officer must then raise the issue with the Parties at the Hearing.

All attending Board members must be present throughout the entire Hearing and decision process.

Written Submissions

Unless the Board directs otherwise, every Party to an application must file a written submission with the Board before the Hearing begins.

Opening Statements

Unless the Board directs otherwise, at the beginning of every Hearing each Party may give a brief opening statement describing the issues that the Party will address at the Hearing.

Order of Presentation

Unless the Board directs otherwise, the evidence at a Hearing may be presented by the Parties in the following order:

1. The Applicant;
2. The Applicant's witnesses, if any;
3. Other Parties whose interest or position is, in the Board's opinion, similar to that of the Applicant;
4. The Government representative at the Hearing;

5. Other Parties whose interest or position is, in the Board's opinion, similar to that of the Government representative;
6. The Board's witnesses, if any;
7. The Applicant, in reply; and
8. The summation arguments by the Parties.

Attendance of Witnesses

Once an Applicant has notified the Board of the name and address of a witness, the Board, in its discretion, may issue a Notice to Attend.

Each Party will pay the costs of its own witnesses.

Failure to Attend Hearing

If a person is served with written notice of a Hearing, or is summoned under these rules, and has not arrived at the scheduled time, the Board may proceed in their absence.

Communication with Witness

A Party may not coach their own witness while that witness is giving evidence or is under cross-examination.

Evidence

At the discretion of the Presiding Officer, any person appearing before the Board may be required to give sworn evidence.

The rules of evidence which apply to judicial Hearings do not apply to Hearings before the Board. The Board must consider any evidence that in its opinion is reliable and relevant to the matter being heard and weigh it accordingly.

Witnesses other than the Applicant may, at the Board's discretion, be excluded from the Hearing room until the Board hears their evidence.

The Chair or Presiding Officer may appoint one or more people who, in the opinion of the Chair or Presiding Officer, have special technical or other knowledge, to inquire into and report to or appear before the Board in respect of the matter being heard.

The Chair or Presiding Officer may accept and enter into the record direct testimony of a witness made by a sworn written statement, or a police statement in the case of a police officer, rather than by oral presentation at the Hearing. A witness whose testimony is presented by a sworn written statement must be available for cross-examination if the Chair or Presiding Officer deems it is necessary for the fairness of the proceedings.

Confidential and Sensitive Information

If the Board has been notified and agrees that confidential or sensitive information has been submitted, the Board may take steps to ensure that the confidentiality of this information is respected. However, the Board cannot guarantee confidentiality.

The Board is a public body under the *Freedom of Information and Protection of Privacy Act* and information may not be disclosed in violation of the Act.

Cross-examination

There is no general right of cross-examination unless in the opinion of the Board it is necessary for fairness of the proceedings.

Adjournments of Matters Before the Board

The Board may adjourn a Hearing on its own initiative or if requested to do so by a Party and with any conditions the Board considers appropriate.

Costs

The Board does not generally award costs, however, it may direct the payment of costs by Parties who withdraw with less than 7 Business Days notice, or who do not attend at all. In these cases, the Board may direct that a Party to a matter being considered before the Board must pay costs, in any amount considered appropriate by the Board, to:

- one or more of the other Parties;
- the Crown in right of Alberta; or
- one or more of those other Parties and the Crown in right of Alberta.

Board Decision

Where the Board makes a decision the decision document must contain:

- a statement of the issues to be decided;
- the findings of fact on which it based its decision;
- the decision;
- the reasons for the decision; and
- for administrative penalty appeals, the date upon which the decision will become effective.

Issuing and Publication of Decisions of the Board

The Board will endeavour to provide a written decision within 10 Business Days of the Hearing. A copy of the decision document must be sent to every person who appeared before the Board or was a Party to the Hearing.

Reconsideration of Decisions made by the Board

The Board must reconsider a decision on the application of the person who is the subject of that decision.

Once the Board has reconsidered a decision, the Board may refuse to reconsider the decision again if, in the opinion of the Board, there has been no substantial change of circumstances in respect of the matter since the previous reconsideration.

Destruction of any Evidence and Records of Testimony

Any evidence received and reviewed at the Hearing shall be kept with the Board for a period of one year from the date of the Board's decision.

Records will be maintained and destroyed in accordance with the Government of Alberta's records management policy.