

Alberta Transportation Safety Board Administrative Licence Suspension Rules

PREAMBLE

These Administrative Licence Suspension (ALS) rules (Rules) are a supplement to the Alberta Transportation Safety Board (Board) 2003 Rules which can be located at:
<http://atsb.alberta.ca/documents/boardrules.pdf>.

These Rules apply only to ALS appeals. They do not apply to driver conduct reviews, registrar's appeals, or appeals of vehicle seizures. For these kinds of hearings, the 2003 Rules continue to apply.

Where there is a conflict, these Rules override provisions in the 2003 Rules and the current Board policies.

These Rules are being implemented as part of a multi-phased plan to address the transition of the administration of ALS appeals in Alberta.

PART 1—GENERAL MATTERS

1. INTERPRETATION OF RULES

- 1.1. Where these Rules conflict with an Alberta statute or regulation, that regulation or statute applies instead.
- 1.2. Where a specific procedural matter is not addressed in these Rules, the Board's approach will be decided in a manner consistent with these Rules and the principles of procedural fairness.

2. DEFINITIONS

- 2.1. "Appeal" means an appeal of the suspension of a drivers' licence, made under the following sections of the *Traffic Safety Act*:
 - s.39 - Immediate Roadside Suspensions
 - s.39.1 - Zero Tolerance Suspensions
 - s.39.2 - Alberta Administrative Licence Suspensions
- 2.2. "Appellant" means a person who has commenced an Appeal.
- 2.3. "Applicant" means a person who has made an Application.
- 2.4. "Application" means a written request for a decision regarding a matter that is preliminary to an Appeal or a reconsideration of an Appeal, but does not include an Application for Hearing Form.

- 2.5. "Board" The Alberta Transportation Safety Board as established by Section 22 of the *Traffic Safety Act*.
- 2.6. "business days" means days of the week excluding Saturdays, Sundays and Holidays.
- 2.7. "calendar day" means the time from midnight to midnight for all days of the month, including Sundays and statutory holidays.
- 2.8. "case" means the totality of an Appeal or Application before the Board.
- 2.9. "Chair" means the Chair of the Alberta Transportation Safety Board, as designated by the Lieutenant Governor in Council, pursuant to section 23 of the *Traffic Safety Act*.
- 2.10. "clear business day" means, the complete period between 8:15 am and 4:30 pm on days of the week excluding Saturdays, Sundays and Holidays
- 2.11. "clear calendar day" means a complete period of midnight to midnight.
- 2.12. "decision" means the outcome of an Appeal or Application, notification of which is provided to the Appellant or Applicant by email or letter. A decision does not include the written reasons.
- 2.13. "deliberation" means the process of the Board discussing evidence and submissions in, and coming to decisions about, the Appeal or Application. Deliberation takes place without the parties and/or their lawyers or agents present.
- 2.14. "file" means the act of submitting a written or electronic document, or a copy of video evidence, with the Board for storage in the Board's files and for consideration in an Appeal or Application. A filing may be completed by mail, hand delivery, courier, fax, or e-mail.
- 2.15. "hearing" means, in relation to an Appeal or an Application, a session in which evidence and submissions that are before the Board are presented (if applicable), reviewed, considered and decided upon.
- 2.16. "in-person hearing" (also called an "oral hearing") means a hearing at which an Appellant and/or their lawyer or agent appears in person to make submissions about their Appeal. Appellants and witnesses may also provide testimony. Such a hearing consists of a period in which the Board may hear testimony and submissions and a period of deliberation.
- 2.17. "in-writing hearing" (also called a "non-oral" hearing) means a hearing for which all parties provide only written evidence and written submissions, in advance of the hearing. Such a hearing consists of only a period of deliberation.

- 2.18. “merit hearing” means a hearing in which all of the evidence and submissions about the facts related to an Appeal are presented to, and reviewed and considered by, the Board.
- 2.19. “Notice of Deemed Abandonment” means written notice sent by the Board to an Appellant indicating that their Appeal has been deemed to be abandoned.
- 2.20. “Notice of Failure to Act” means written notice sent by the Board to an Appellant indicating that there has been a period of 120 calendar days in a row that the Appellant failed to meet any requirements placed upon them under these Rules or through communication with the Board.
- 2.21. “party”/“parties” means an Appellant, an Applicant, or the Registrar.
- 2.22. “preliminary matter” means any technical or procedural issue to be considered by the Board before the merit hearing.
- 2.23. “Presiding Officer” means a member of the Board charged with overseeing a particular hearing.
- 2.24. “reconsideration” means an Application, by the Appellant, to the Board, to reconsider a decision made by the Board in an Appeal.
- 2.25. “Registrar” means the Registrar of Motor Vehicle Services and includes any person who, on the direction of the Registrar, is acting on behalf of the Registrar.
- 2.26. “serve” and “service” means the official delivery of documentation, which can include by hand delivery, mail, courier, fax, or email.
- If the documentation is sent by mail in Alberta, service is deemed to have occurred on the earlier of the date of receipt or seven days from the date of mailing.
 - If the documentation is sent by mail from outside of Alberta, service is deemed to have occurred on the earlier of the date of receipt or 14 days from the date of mailing.
- 2.27. “submissions” means the summaries of evidence and arguments presented by the parties in support of their side of the case.
- 2.28. “testimony” means oral evidence.
- 2.29. “written reasons” means the written findings and reasons related to a decision made by the Board.

3. TIME

- 3.1. A filing must be received by the Board during normal business hours, 8:15 am to 4:30 pm.

3.2. A filing received by the Board on a day that the Board is not open for business, or on a business day after the close of business hours will be deemed to be filed on the next business day.

4. OPPORTUNITY TO BE HEARD

The Board will endeavour to give the Appellant an opportunity to be heard within 120 calendar days of the date of filing the complete Application for Hearing form.

PART 2—PRE-HEARING MATTERS

5. APPLICATIONS ABOUT THE BOARD'S JURISDICTION TO COMMENCE (START) AN APPEAL

5.1. The *Traffic Safety Act* requires that appeals be filed with the Board within 30 calendar days of the person requesting the Appeal being served with the Notice of Suspension/Disqualification. If the person seeking to make the Appeal does not meet this 30-day time limit, the Appeal cannot be commenced, as the Board does not have the jurisdiction to hear the matter (i.e. it cannot hear the matter).

5.2. If an Application for Hearing form for an Appeal is filed with the Board on a date that appears to be past the 30-day time limit, the Board will consider the timeliness of the application (i.e. whether it has the jurisdiction to hear the matter) before proceeding to schedule a hearing on the matter.

5.3. Before considering whether the application was filed before the deadline, the Board will provide the Registrar with written notice of the Application.

- Upon such notification the Registrar must, within ten business days, file with the Board and serve the Applicant with a copy of the Notice of Suspension/Disqualification form. The Registrar may also file and serve submissions on the issue of jurisdiction.
- After such service by the Registrar, the Applicant has ten calendar days in which to file with the Board and serve the Registrar any submissions they wish to make with respect to the issue of jurisdiction.

5.4. An Application regarding jurisdiction will be heard in an in-writing hearing, conducted by one Board member, within 30 calendar days from the date the Board received the Application for Hearing form.

5.5. The Applicant will receive the Board's decision regarding whether the Board has jurisdiction to continue within two business days of the Board having made the decision.

5.6. If the Board determines that it has jurisdiction to continue, an Appeal will be commenced.

6. LAST MINUTE EVIDENCE & NEW SUBMISSIONS IN APPEALS AND APPLICATIONS

- 6.1. During the five business days before the hearing, no new written or documentary evidence or written submissions by the parties, or witnesses for the parties, may be introduced except by consent of all parties.
- Such new written/documentary evidence or written submissions, along with the written consent, must be filed with the Board and served on the other party at least three business days before the hearing.
- 6.2. If such new evidence is not agreed to, the Board may, for reasons of procedural fairness, adjourn the hearing date.
- In such a case, the party that did not introduce the new evidence will have five clear business days to file with the Board and serve the other party submissions addressing the new evidence.
 - Thereafter, the party that introduced the evidence will have two clear business days to file and serve rebuttal submissions.

7. FAILURE TO ATTEND IN-PERSON HEARING

If the Appellant, or the lawyer or agent representing them, has not arrived at their in-person hearing by 15 minutes after the scheduled start time of the hearing, the Board may either proceed in their absence, reschedule the hearing, or deem the Appeal abandoned, as the Board considers appropriate.

8. DEEMED ABANDONMENT RESULTING FROM APPELLANT FAILURE TO ACT

- 8.1. If, at any time prior to the merit hearing of the Appeal, there is a period of 120 calendar days in a row that the Appellant fails to meet any requirements placed upon them under these Rules, the Board will provide to the Appellant a Notice of Failure to Act.
- 8.2. An Appellant who wishes to continue with their Appeal must, within 10 calendar days from the date of the Notice of Failure to Act, provide written notice to the Board that they wish to continue with their Appeal.
- If the Appellant provides such notice, the Board will schedule a merit hearing of the Appeal for a date within 120 calendar days of the date the Board receives the written notice.
 - If the Appellant does not provide such notice, the Appeal will be deemed to be abandoned and the Board will provide written notice of the deemed abandonment (“Notice of Deemed Abandonment”) to the Appellant and the Registrar.
- 8.3. An Appeal that has been deemed abandoned can only be restored upon written request, with reasons, by the Appellant to the Board.
- This request must be filed within 30 calendar days of the date that the Notice of Deemed Abandonment from the Board has been served on the Appellant.
 - The person making the request must serve the Registrar with the request and reasons.

- 8.4. An Application for the restoration of an Appeal will be heard in an in-writing hearing conducted by one Board member, within 10 business days of the filing of the written request by the Applicant.
- 8.5. The Applicant will receive the Board's decision within 48 hours of the Board having made its decision.
- 8.6. If the Board determines that the Appeal is restored, the Board will schedule a merit hearing of the Appeal for a date within 120 calendar days of the date of the Board's decision.

PART 4—POST-HEARING MATTERS

9. WRITTEN REASONS

- 9.1. The Board will endeavour to provide written reasons within 90 calendar days from the date of the hearing.
- 9.2. Written reasons include:
 - the members of the Board at the hearing;
 - reference to the legislation under which the Board has the authority to Act;
 - the issues before the Board and the main arguments put forth by the parties;
 - the findings of fact on which the Board based its decision; and
 - the reasons and rationale for the decision(s) made by the Board, making a connection between evidence presented and the conclusion reached.
- 9.3. A copy of the written reasons will be sent to both the Appellant and the Registrar and will be published on CanLii.

10. APPLICATIONS FOR RECONSIDERATION

- 10.1. A reconsideration Application may only be filed within 30 calendar days of the date the Board sent the written reasons to the Appellant/Applicant.
 - The Board will only hear one reconsideration Application of an Appeal/another Application.
- 10.2. A reconsideration Application must be made in writing, filed with the Board, and served on the Registrar by the person requesting the reconsideration.
- 10.3. The Board will only hear a reconsideration Application if, in the opinion of the Board, the circumstances in respect of the case have substantially changed from the time of the original decision.
 - In order to demonstrate that the circumstances have substantially changed from the time of the original decision, the person requesting the reconsideration must provide

new evidence that could not reasonably have been submitted at the time of the original hearing.

- 10.4. A reconsideration Application is heard in an in-writing hearing within 10 business days of the filing of the Application. The only issue before the Board at that time is whether there is new evidence that demonstrates that the circumstances have changed.
- 10.5. The Applicant will receive the Board's decision by letter, which will be sent by the Board within two business days of the Board having made its decision.
- 10.6. If the Board decides to reconsider the Appeal, a new merit hearing will be scheduled as soon as practicable.