

INDUSTRY TRAINING APPEAL BOARD

RULES

Rules for appeals under the *Industry Training Authority Act (SBC 2003 c. 34)*

RULE 1 - PURPOSE

1(1) The purpose of these rules is to facilitate the just and timely resolution of appeals to the appeal board under the *Industry Training Authority Act*.

1(2) These rules must be read together with:

- a) the *Industry Training Authority Act*;
- b) the *Administrative Tribunals Act*; and
- c) practice directives issued by the appeal board under section 12 and 13 of the *Administrative Tribunals Act*;

RULE 2 - DEFINITIONS

2(1) In these rules:

“**Act**” means the *Industry Training Authority Act*, SBC 2003 c. 34 and amendments and includes all regulations made under the Act;

“**appeal**” means an appeal to the appeal board under section 11(4) of the Act or a request for reconsideration of a decision referred to the appeal board by the chief executive officer pursuant to section 11(2)(c) of the Act;

“**appeal board**” means the Industry Training Appeal Board established under section 10 of the Act and for the purpose of these rules includes the chair and members;

“**appellant**” means a person bringing an appeal, or whose request for reconsideration has been referred to the appeal board, under the Act;

“**ATA**” means the *Administrative Tribunal Act*, SBC 2004, c.45;

“**chair**” means the member designated as chair of the Industry Training Appeal Board under section 10(1)(a) of the Act;

“**chief executive officer**” means the chief executive officer of the industry training authority;

“**intervener**” means a person the appeal board allows to participate in an appeal under section 33 of the *Administrative Tribunals Act* and Rule 10;

“**member**” means a member of the appeal board, the member designated as chair or a panel of members;

“**participant**” means an appellant, respondent or intervener;

“**party**” means an appellant or respondent;

“**registry**” means the office for delivery of the Industry Training Appeal Board under Rule 4; and

“**respondent**” means the chief executive officer of the industry training authority or his or her designate.

RULE 3 – STARTING THE APPEAL

3(1) Where an appellant starts an appeal under section 11(4) of the Act, the appellant must deliver a notice of appeal to the registry and the respondent.

3(2) The notice of appeal must be in the form provided by the minister and must:

- a) be in writing;
- b) contain the appellant’s contact information as set out in Rule 5(2) including the trade workers identification number where applicable;
- c) identify the specific matter being appealed, the decision that is being appealed, the person who made the decision, the date of the decision and the date the appellant was notified of the decision;
- d) include a copy of the decision being appealed;
- e) state why the decision should be changed and what outcome is requested; and

f) be signed by the appellant or the appellant's lawyer or agent.

3(3) If the notice of appeal appears to be deficient, the chair or the chair's delegate will notify the appellant and the appeal board will allow the appellant up to 14 days to correct the deficiency.

RULE 4 – COMMUNICATIONS WITH THE APPEAL BOARD

4(1) Unless the appeal board directs otherwise, all communication with the appeal board must be directed to the registry at the following address:

Industry Training Appeal Board
4th Floor, 747 Fort Street
Victoria, BC

MAILING ADDRESS

PO BOX 9425 STN PROV GOV'T
Victoria, BC V8W 9V1

Telephone: 250-387-3464
Facsimile: 250-356-9923

4(2) A document may be delivered to the registry by hand, mail, courier or fax or any other means authorized or permitted by the appeal board.

4(3) A document that is delivered by fax must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date, and time of the transmission and a telephone number to contact if there are transmission problems.

4(4) The registry's hours of operation are from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding public holidays.

4(5) A document that is received after regular hours of operation is deemed to be delivered on the next day the registry office is open.

RULE 5 – REPRESENTATION AND CONTACT INFORMATION

5(1) A participant may be represented by a lawyer or other agent.

5(2) A participant must provide the appeal board and the other participants with contact information consisting of:

a) full name;

- b) current postal address in British Columbia;
- c) telephone number and fax or email address (if any); and
- d) contact information of the participant's lawyer or other agent (if any).

5(3) A participant must promptly notify the appeal board of any change in their contact information.

RULE 6 – DELIVERING DOCUMENTS

6(1) When a participant delivers a document to the registry, the participant must also deliver a copy of it to each of the other participants in the appeal in accordance with this rule.

6(2) A document may be delivered to a participant:

- a) by leaving a copy of it with the participant in person;
- b) by delivering a copy of it in accordance with the participant's contact information; or
- c) by any other means permitted by the appeal board that allows for proof of receipt.

6(3) A document that is delivered by fax must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission and a telephone number to contact if there are transmission problems.

6(4) A document that is delivered after 4:30 pm, is deemed to be delivered on the next day that is not a Saturday, Sunday or public holiday.

6(5) A document that is sent by mail is deemed delivered on the fifth day, excluding holidays, after it is mailed.

6(6) An application must be made to the appeal board, by written request, for authorization to deliver a document by any other means than specifically permitted by the Rules.

RULE 7 – TIME REQUIREMENTS

7(1) In calculating time under these rules or in an order or direction of the appeal board:

- a) the number of days between two events is counted by excluding the days on which those events happen;
- b) if the last day of a time period for delivering a document or doing any other thing falls on a Saturday, Sunday or public holiday, the time ends on the next day that is not a Saturday, Sunday or public holiday.

7(2) If the appeal board is satisfied that special circumstances warrant an extension of a time limit to start an appeal, it may grant an extension of time whether or not the time limit is already expired.

7(3) The appeal board may also extend or reduce any time limit in these rules, whether or not the time limit is already expired, as the appeal board considers fair and appropriate in the circumstances.

7(4) To apply to extend or reduce a time limit, a participant must deliver a written request to the registry that explains:

- a) the reason(s) the extension or reduction of the time limit is required;
- b) whether other participants agree to the extension or reduction of the time limit (if known); and
- c) whether any harm would result if the extension or reduction of the time limit is not granted.

7(5) Before granting the extension or reduction of a time limit, the appeal board will give other participants an opportunity to be heard.

RULE 8 – PROVIDING AND CERTIFYING THE APPEAL RECORD

8(1) Subject to Rule 8(2), the appeal record consists of:

- a) the decision being appealed;
- b) the respondent's reasons for decision;
- c) all documentary evidence, reports, policies, legislative provisions, and submissions considered by the respondent in making the decision,

but it does not include solicitor-client privileged communications between the respondent and the respondent's lawyer.

8(2) For purposes of an appeal regarding a refusal to award an industry training credential or industry training recognition credential,

- (i) the appeal record may include a breakdown of the results of an examination or test and, where applicable, the National Occupational Analysis that outlines the content areas of a relevant examination or test, but, subject to Rule 8(2)(ii), it does not include a copy of any actual examination or any record of a question that has or is to be used on an examination or test, and
- (ii) upon the request of a party or on its own motion the appeal board may, after hearing from the parties, direct that all or part of an examination or test excluded under Rule 8(2)(i) be disclosed for purposes of the appeal or reviewed by the appeal board in confidence, to the exclusion of a party or parties, on terms the appeal board considers necessary to ensure the confidentiality and security of the examination or test and the proper administration of justice.

8(3) Where the appeal board orders disclosure of some or all of a relevant examination or test under Rule 8(2)(ii) to a party or parties (or their counsel), the appeal board will require the parties' acknowledgement that the disclosure is only for the purpose of the appeal before the appeal board and that the information may not be disclosed to any other person without the express consent of the appeal board.

8(4) Unless the appeal board authorizes otherwise, within 14 days after the delivery of the notice of appeal the respondent must deliver the appeal record to the registry and to the appellant as required by Rule 6(1).

8(5) The appeal record must be clearly legible, with sequential page numbering and a detailed table of contents, and when it contains more than 25 pages, each copy of the appeal record must be bound or secured in a binder or similar book.

8(6) The appeal record must also include the written certification of the respondent that it is complete and accurate in all respects.

RULE 9 – TEMPORARY SUSPENSION OF THE DECISION BEING APPEALED

9(1) To apply for an order temporarily suspending the decision being appealed, a party must deliver a written request to the registry that explains:

- a) the reason(s) a temporary suspension of the decision being appealed is required;
- b) whether the appeal concerns a serious issue;
- c) what harm will result if the order is not granted; and
- d) whether the other party agrees to the temporary suspension (if known).

9(2) Before granting an application for temporary suspension of the decision being appealed, the appeal board will give the other party an opportunity to be heard.

RULE 10 – INTERVENERS

10(1) A person may apply to participate as an intervener in an appeal by delivering a written request to the registry that demonstrates:

- a) that the person can bring a valuable contribution or bring a valuable perspective to the appeal; and
- b) that the potential benefits of the intervention outweigh any prejudice to the party caused by it.

10(2) The appeal board will give the parties an opportunity to be heard before granting an application to intervene in an appeal.

10(3) The appeal board may limit or impose terms and conditions on the participation of the intervener on an appeal. Unless specifically authorized by the appeal board, an intervener may not submit evidence in an appeal.

RULE 11 – OTHER APPLICATIONS ON PRELIMINARY OR INTERIM MATTERS

11(1) Other applications for directions or orders on preliminary or interim matters must be made, unless otherwise directed by the appeal board, by delivering a written request to the registry that

explains the reason(s) the direction or order is required and whether other participants agree to it.

11(2) Before granting an application for a direction or order on a preliminary or interim matter and except in extenuating circumstances, the appeal board will give other participants an opportunity to be heard.

RULE 12 – APPEAL MANAGEMENT

12(1) The appeal board will manage the appeal process to ensure the just and timely hearing and resolution of appeals, including making recommendations, directions and orders about any one or more of the following:

- a) the identification and simplification of facts and issues;
- b) the timely disclosure of documents, witness lists and the anticipated evidence of witnesses;
- c) the form and delivery of documents or other evidence, admissions, agreed facts and submissions;
- d) determining whether preliminary or interim matters or the hearing of an appeal will be conducted by any combination of written, electronic or oral hearing;
- e) time estimates and scheduling matters; and
- f) procedural matters brought to the appeal board by the participants in an appeal.

RULE 13 – APPEAL MANAGEMENT CONFERENCES

13(1) On its own initiative or at the request of a participant, the appeal board may schedule an appeal management conference by written notice to the participants and may direct the participants to deliver documents or submissions prior to the conference.

13(2) Unless the parties agree otherwise, notice of an appeal management conference will be provided at least 14 days before the date set for the conference.

13(3) An application to change the date of a scheduled appeal management conference must be made by delivering a written

request to the registry that explains the reason(s) the change is required and whether other participants agree to it.

13(4) Unless the appeal board authorizes otherwise, all participants or their representatives must attend appeal management conferences.

13(5) The member or delegate appointed to conduct an appeal management conference may:

- a) discuss clarification and simplification of issues on the appeal;
- b) mediate issues on the appeal;
- c) schedule the date, time and place for the hearing of the appeal;
- d) discuss the identification of agreed facts;
- e) discuss any evidence that will be required and the procedure that will be followed for the hearing of the appeal;
- f) order a participant to give another participant copies of documents by a set date or to allow another participant to inspect and copy documents by a set date;
- g) discuss and set a schedule for participants' delivery and exchange of documents and submissions;
- h) hear and decide applications on preliminary or interim matters, including applications to extend a time limit, compel a witness or order disclosure or cancel an order to compel a witness or disclosure, temporarily suspend the decision being appealed or adjourn a hearing date; or
- i) make any other recommendation, direction or order for the just and timely resolution of the Appeal.

13(6) The member or delegate appointed to conduct the appeal management conference may, following the conference, issue a report that includes recommendations, directions, or orders made by the member or delegate and the consensus of the parties on any facts, issues or procedural matters on the appeal.

13(7) A member who conducts an appeal management conference where confidential settlement matters are discussed will not, unless the parties agree, hear the merits of the appeal.

RULE 14 – WITHDRAWING OR SETTLING THE APPEAL

14(1) To withdraw all or part of the appeal, the appellant must deliver written notice of withdrawal to the appeal board. The appellant may do this at any time before the appeal board has made its final decision disposing of the appeal and the appeal board will order that the appeal or part of it is dismissed.

14(2) To settle all or part of an appeal, the parties must deliver written notice of settlement to the appeal board. The notice of settlement may incorporate a request for the appeal board to make an order that includes the terms of settlement to the extent that those terms are consistent with the Act.

RULE 15 – SUMMARY DISMISSAL OF THE APPEAL

15(1) To apply to the appeal board for an order summarily dismissing an appeal, a party must deliver a written request to the registry that demonstrates any one of the following:

- a) the appeal is not within the jurisdiction of the appeal board;
- b) the appeal was not filed within the applicable time limit;
- c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
- d) the appeal was made in bad faith or for an improper purpose or motive;
- e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the appeal board;
- f) there is no reasonable prospect the appeal will succeed; or
- g) the substance of the appeal has been appropriately dealt with in another proceeding.

15(2) The appeal board will give the parties an opportunity to be heard before summarily dismissing an appeal on the application of a party or on the appeal board's own initiative.

RULE 16 – HEARING AN APPEAL

16(1) The appeal board will schedule the written, oral or electronic hearing of the appeal by written notice to the participants. A party

may apply to the appeal board to have the appeal heard by electronic hearing where attendance at a hearing in person would pose a hardship on that party.

16(2) Unless the parties agree otherwise, notice of the hearing of the appeal will be provided at least 30 days before the date set for the hearing.

16(3) An application to change a scheduled hearing date must be made at the earliest opportunity and may be made:

- a) by delivering a written request to the registry that explains the reason(s) the change is required and whether the other participants agree to it; or
- b) if the hearing is underway, by verbal request to the member(s) hearing the appeal that explains the reason(s) the change is required and whether the other participants agree to it.

16(4) Before granting an application to change a scheduled date for hearing, and except in extenuating circumstances, the appeal board will give other participants an opportunity to be heard.

16(5) In considering whether to grant an application to change the scheduled date for hearing, the appeal board will have regard generally to the following factors:

- a) the reason(s) the change is required;
- b) whether the change will help resolve all or part of the appeal;
- c) whether and the extent to which prejudice will result if the change is granted or refused;
- d) whether other participants agree to the change;
- e) the reasonableness of delay in the progress of the appeal that will result from the change;
- f) the number, length, and causes of previous delays in the progress of the appeal;
- g) whether the change is necessary to ensure a fair hearing of the appeal; and

h) the public interest in the efficient and speedy conduct of appeals.

16(6) The appeal board will generally require the appellant's case to be presented first, followed by the respondent's case and the appellant will have the final opportunity to reply.

16(7) The appeal board will generally require oral evidence to be given under oath or affirmation.

16(8) Where timely notice of the hearing is given and a participant fails to attend at the hearing, the appeal board may proceed with the hearing and disposition of the appeal, without further notice to the participant.

16(9) Subject to restriction of access under the ATA or these rules, a participant may at the participant's expense arrange for a qualified verbatim recorder to record the oral hearing of an application or preliminary matter and they must provide the appeal board with a copy of any transcript ordered of all or part of the recording.

RULE 17 – WITNESSES

17(1) To apply for an order to compel a witness to attend to give evidence at the hearing of the appeal or to produce a document or thing, a party must deliver a written request to the registry that:

- a) explains the reason(s) the order is required,
- b) explains the efforts made to have the witness attend or produce a document voluntarily, and
- c) demonstrates that the testimony of the witness or the document or thing to be produced is admissible and relevant to an issue in the appeal.

17(2) Unless the appeal board authorizes otherwise, an application for an order to compel a witness must be delivered to the appeal board at least 21 days before the witness is required to attend to give evidence at the hearing of the appeal or to produce a document or thing.

17(3) The party seeking an order to compel a witness must offer the witness reasonable estimated travelling expenses in advance of the required attendance.

17(4) If a person will attend to give evidence at the hearing of the appeal or produce a document or thing voluntarily, an order to compel attendance or production is not necessary.

RULE 18 – AMENDING OR CANCELLING AN ORDER TO ATTEND OR PRODUCE

18(1) A person who receives an order to attend a hearing or produce a document or thing may apply to the appeal board to amend the terms of or to cancel the order by delivering a written request to the appeal board that explains the reason(s) the order should be cancelled or its terms should be amended.

18(2) Before amending the terms of or cancelling an order to attend or produce, the appeal board will give the party who requested the order to compel a witness or production of a document or thing an opportunity to be heard.

RULE 19 – EXPERT EVIDENCE

19(1) Unless the appeal board authorizes otherwise, a party who wishes to submit the evidence of an expert must deliver a report stating the qualifications and evidence of the expert:

- a) at least 30 days before the hearing of the appeal; or
- b) in the case of evidence of an expert submitted in response to an expert report delivered by another party, at least 7 days before the hearing of the appeal.

19(2) Unless the appeal board authorizes or the other party agrees otherwise, a party who submits the evidence of an expert must make the expert available for cross-examination at the hearing of the appeal.

RULE 20 – ACCESS AND RESTRICTION OF ACCESS TO HEARINGS AND DOCUMENTS

20(1) An oral hearing of an appeal will be open to the public unless the appeal board directs that all or part of the information be received to the exclusion of the public because in the opinion of the appeal board:

- a) the desirability of avoiding disclosure in the interests of any person or participant affected or in the public interest

outweighs the desirability of adhering to the principle that hearings be open to the public; or

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

20(2) A document submitted in the hearing of an appeal will be accessible to the public unless:

- a) the appeal board directs that all or part be received to the exclusion of the public because, in the opinion of the appeal board, the desirability of avoiding disclosure in the interests of any person or participant affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or
- b) the appeal board directs that all or part be received in confidence to the exclusion of a participant or participants because, in the opinion of the appeal board, its nature requires that direction to ensure the proper administration of justice.

20(3) The evidence of a witness in the hearing of an appeal will be accessible to the participants on the appeal unless the appeal board directs that all or part be received in confidence to the exclusion of a participant or participants because, in the opinion of the appeal board, its nature requires that direction to ensure the proper administration of justice.

20(4) The appeal board will not provide access to the following:

- a) personal notes, communications or draft decisions of an appeal board decision-maker;
- b) notes or records kept by a person appointed by the appeal board to conduct a dispute resolution process in relation to an appeal; or
- c) information received by the appeal board in the hearing, or part of the hearing, of an appeal from which the public or a participant was excluded.

RULE 21 – NON-COMPLIANCE

21(1) If a participant fails to participate in the appeal process in accordance with these rules or a procedural order or direction of the appeal board, the appeal board may:

- a) manage, hear and dispose of the appeal without the participation of that participant; and
- b) make any other order or direction that the appeal board considers fair.

RULE 22 - INTERPRETERS AND OTHER ACCOMMODATIONS

22(1) If a party, a witness, or his or her representative requires an interpreter and /or any other accommodation (e.g. services to assist the visually or hearing impaired) to enable their meaningful participation at the hearing, the appeal board will, at the request of the participant or on its own motion, make every effort to accommodate the participant's needs, as is reasonable in the circumstances. The person requesting interpretation or other accommodation must notify the appeal board as early in the appeal process as possible.

22(2) Interpreters for other languages shall be competent and independent and shall swear or affirm that they will interpret accurately.

Approved: February 2012