

Energy Resource Appeal Tribunal

FIPA Access Assessments

This organization was listed as an independent public body at the start of 2024 under British Columbia's [Freedom of Information and Protection of Privacy Act](#) (FOIPPA) and the [Information Management Act](#) (IMA).

FIPA conducts empirical research as part of its program activities. Its access assessment activities are meant to monitor freedom of information. <https://fipa.bc.ca/research-resources/access-assessments/>

This PDF contains the requests that were sent to this public body, as well as the records that were subsequently released.

These records were originally collected as data for a more in-depth study as part of FIPA's empirical research. That involved submitting focused freedom of information (FOI) requests to determine how this public body, which we classified as part of the broader public sector, was interpreting and applying FOIPPA and IMA legislation.

That project is called *Access Regimes: Social Studies of Recordkeeping, Bureaucracy, and Secrecy under Freedom of Information Law*. Further information about that study can be found on the Open Science Foundation's [registration platform](#).

Distinct from the original study, FIPA has also assessed whether this public body meets expectations identified in an IPSOS poll we commissioned. That poll can be found on the FIPA website here. <https://fipa.bc.ca/oil-and-gas-appeal-tribunal/>

About FIPA

The BC Freedom of Information and Privacy Association (FIPA) is a non-partisan, non-profit society that was established in 1991 to promote and defend freedom of information and privacy rights in Canada. While we are based in BC, our membership extends across Canada, and we regularly partner with organizations throughout the country.

Our goal is to empower citizens by increasing their access to information and their control over their own personal information. We serve a wide variety of individuals and organizations through programs of public education, public assistance, research, and law reform. We are one of very few public interest groups in Canada devoted solely to the advancement of freedom of information and privacy rights.

Requests sent to broader public sector organizations

Request item 1

Current organizational charts that indicate freedom of information personnel and information management personnel.

Summary

Charts that outline where freedom of information personnel and information management personnel exist within an organization.

Rational

Organizational charts help identify who is responsible for fulfilling certain obligations.

Request item 2

Delegation of authority charts for the Freedom of Information and Protection of Privacy Act.

Summary

Charts that outline who has certain powers under the Freedom of Information and Protection of Privacy Act.

Rational

Delegation of authority charts are standard instruments across the implementation of any law with delegable and discretionary powers.

Request item 3

Policies or procedures regarding freedom of information (not privacy), including policies and procedures regarding the routine release of information and proactive disclosure.

Summary

Freedom of information policies.

Rational

Policies are the core of implementing any new public initiative.

Request item 4

Final reports regarding the public body's performance reporting, program evaluations, or project implementation plans or proposals with respect to freedom of information.

Summary

Internal reports about freedom of information.

Rational

How public bodies monitor their performance matters.

Request item 5

Delegation of authority charts for the Information Management Act, as applicable.

Summary

Charts that outline who has certain powers under the Information Management Act.

Rational

Delegation of authority charts are standard instruments across the implementation of any law with delegable and discretionary powers.

Request item 6

Interoffice memoranda about freedom of information and records/information management.

Summary

Memos about freedom of information and records/information management.

Rational

Internal communications can structure organizational activity.

Request item 7

Metadata Application Profiles and records disposition models, as well associated policies and procedures and implementation plans and reports.

Summary

Metadata schemas for records management systems.

Rational

Metadata is an essential part of establishing control over records.

Request item 8

Office of primary responsibility designations/matrices.

Summary

Lists of offices responsible for certain organizational records.

Rational

Lists like this are often a reflection of the classification logics used to manage records.

Request item 9

Technical manuals for records management systems.

Summary

User manuals for records management software.

Rational

Manuals contribute to how staff interact with technology.

Request item 10

Acceptable use of technology policy instruments (where “instrument” has the same meaning as in [Treasury Board Directive 1/23](#) and onboarding manuals.

Summary

Acceptable use of technology policies.

Rational

Acceptable Use Policies govern how employees may appropriately interact with technology over the course of their job.

Request item 11

File plans/lists/indexes and/or records management ontologies/thesauri.

Summary

Lists of regularly created files.

Rational

File lists are a prerequisite to an up-to-date file classification plan.

Request item 12

Public body self-assessments and audits/evaluations of records/information management.

Summary

Self-assessments conducted according to an internal government standard.

Rational

Regular reviews of records management is best practice in information governance.

Request item 13

Policy instruments regarding records or information management.

Summary

Records management policies.

Rational

Policies are the core of implementing any new public initiative.

Request item 14

Copies of record retention schedules.

Summary

Record retention schemas.

Rational

Retention schedules are the key instrument in asserting control over records classification and retention.

Request item 15

The public body's information resources/information asset plans/records management plans, as applicable.

Summary

Records management plans.

Rational

Records management is something that must be planned out carefully.

Request item 16

Licenses, contracts, or agreements between the public body and recordkeeping system service providers or contractors.

Summary

Contracts for recordkeeping systems.

Rational

Contracts detail roles and responsibilities with respect to system implementation and maintenance.

Request item 17

Final jobs description files for any employee who regularly performs a role or responsibility (1) in responding to a freedom of information request or (2) fulfilling public body's records/information management needs, including if those job descriptions do not explicitly mention FOI requests or records/information management.

Summary

Job descriptions for records management and freedom of information staff.

Rational

Job descriptions articulate the necessary skills and anticipated responsibilities of people charged with doing FOI or RM work.

Request item 18

Records confirming the appointment and responsibilities of subdivisional freedom of information (not privacy) or records management 'champions,' (i.e. an ambassador for records management or FOI within a particular unit, such as FOI Oversight Liaison Officers or Duty to Document Champions), if any. (If applicable roles exist, kindly include memorandums, plans, or reports issued by those persons).

Summary

Records concerning the appointment of employees responsible for promoting freedom of information and records management.

Rational

Internal promotion of FOI and RM contributes to effective implementation.

Request item 19

Organizational charts that include records/information management personnel (or the relevant organizational charts if your public body does not have dedicated RM/IM personal).

Summary

Charts that outline where freedom of information personnel and information management personnel exist within an organization.

Rational

Organizational charts help identify who is responsible for fulfilling certain obligations.

Request item 20

Final training packages (i.e. presentation slides, etc.) and training implementation history files (e.g. reports of completion, etc.) for freedom of information and records/information management, including initial training specific to FOI analysts/coordinators.

Summary

Training materials for freedom of information and records management.

Rational

Training is necessary for the successful implementation of FOIPPA and IMA.

Request item 21

internal surveys and the results of surveys concerning records/information management of freedom of information.

Summary

Surveys about records management and freedom of information.

Rational

Surveys of staff provide insight into the state of records management and freedom of information.

Request item 22

“Documenting government decisions” policy instruments (where “instrument” has the same meaning as in [Treasury Board Directive 1/23](#)).

Summary

Duty to document policies.

Rational

The Chief Records Officer has developed directives instructing public bodies to develop organization-specific policies for documenting government decisions.

Request item 23

Final Requests for Proposals concerning records management/freedom of information (not privacy).

Summary

Requests for proposals for freedom of information and records management projects.

Rational

RFPs document a public body's needs in order to identify the solutions they are seeking proposals to address.

Request item 24

Copies of checklists, forms, templates, guides and other tools used in relation to processing freedom of information requests.

Summary

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Rational

Workflow materials for freedom of information processing.

Request item 25

Contracts and statements of work for consultant services for freedom of information/records management work.

Summary

Contracts and statements of work for consultants' work related to freedom of information and records management.

Rational

Contracts and statements of work define the boundaries of what work the public body performs and what work it relies on others' to perform.

Request item 26

Case management procedures (i.e. how analysts are assigned, what data is to be logged, how to notify program areas, etc.) for freedom of information requests.

Summary

Procedures for managing request workflows.

Rational

Case management software helps public bodies keep track of requests and organize their responses.

Request item 27

Copies of any plans or assessments done in preparation for the application of the Information Management Act (e.g. Readiness Assessments for the provision relating to document government decisions).

Summary

Reports produced to prepare to implement duty to document.

Rational

These reports established the baseline position from which duty to document was purportedly implemented.

Request item 28

Any previously unrequested/undisclosed records that assist in understanding how (1) records management is practiced in your public body, or (2) how decisions about freedom of information requests are made and how they are processed (e.g. any document, including an intranet file or records of another public body, that an employee references in the course of processing a request or describes how to apply exceptions, search for records, etc.).

Summary

-

Rational

-



Energy Resource Appeal Tribunal

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Spencer Izen

British Columbia Freedom of Information and Privacy Association

AccessRequestFrom@fipa.bc.ca

November 23, 2023

Dear Mr. Izen,

Re: Your Freedom of Information Request Dated November 3, 2023
FIPA file #FIPA FOI 2023-146

I am writing in response to your request, submitted under the *Freedom of Information and Protection of Privacy Act*, for four classes of records, dating from January 1, 2021 to November 3, 2023:

- current organizational charts that indicate freedom of information personnel and information management personnel;
- delegation of authority charts for the *Freedom of Information and Protection of Privacy Act*;
- policies or procedures regarding freedom of information (not privacy), including policies and procedures regarding the routine release of information and proactive disclosure; and
- final reports regarding the public body's performance reporting, program evaluations, or project implementation plans or reviews with respect to freedom of information.

Your request also specifies that, if there is a conflict between the description of the classes above and the date range provided, the class of records takes priority.

With respect to the first class of records, I have attached our current organizational chart.

We do not have any records described in the second class of records, as I have not delegated my authority under the *Freedom of Information and Protection of Privacy Act*.

With respect to the third class of records, I have attached our Rules and our Manual of Practice and Procedure, which both address freedom of information.

We do not have any records described in the fourth class of records.

I hope that this is responsive to your request. Please advise if you need anything further.

Best wishes,

A handwritten signature in black ink, reading "D. Le Houillier". The signature is fluid and cursive, with the first name "D." and last name "Le Houillier" clearly distinguishable.

Darrell Le Houillier

Chair

Energy Resource Appeal Tribunal

Energy Resource Appeal Tribunal

**PRACTICE AND PROCEDURE
MANUAL**

July 1, 2016
Amended: April 2019
Amended: August 2023

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DISCLAIMER

The legislation referred to in this Manual is subject to amendment from time to time and to judicial interpretation. The Manual may not reflect recent amendments to the legislation and should not be relied upon as an accurate statement of the existing law. It is a guide to the Tribunal's practices and procedures only. An official version of the legislation may be obtained from Crown Publications or online through BC Laws (<http://www.bclaws.ca/>).

Energy Resource Appeal Tribunal

PRACTICE AND PROCEDURE MANUAL

1.0 INTRODUCTION

The Energy Resource Appeal Tribunal (the "Tribunal") was established in 2010 under section 19 of the *Oil and Gas Activities Act*, S.B.C. 2008, c. 36. It is a quasi-judicial tribunal with statutory authority to hear appeals from administrative decisions made under the *Oil and Gas Activities Act*.

The appeal process is governed by the legislated requirements set out in the *Oil and Gas Activities Act*, the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, as well as by the common law principles of procedural fairness and natural justice.

In addition to hearing appeals, the Tribunal produces a report which is provided to the Legislative Assembly. A copy of the Tribunal's reports are posted on the Tribunal's website (www.bcerat.ca), and is available upon request.

To ensure that the appeal process is open and understandable to the public, the Tribunal has developed this Manual. It contains information about the Tribunal itself, the legislated procedures that the Tribunal is required to follow, the [Tribunal's Rules](#) created pursuant to [section 11 of the Administrative Tribunals Act](#), and the policies the Tribunal has adopted to fill in the procedural gaps left by the legislation and the Rules.

Parties that are involved in the appeal process can expect the Tribunal to follow the legislated procedures, the Rules, and the policies set out in this Manual. If a matter arises during the course of an appeal that is not addressed by the legislation, the Rules, or the policies and procedures set out in this Manual, the Tribunal will do whatever is necessary to enable it to adjudicate fairly, effectively and completely on the appeal. Further, the Tribunal may dispense with compliance with any or all of a Tribunal policy or procedure when it is appropriate in the circumstances.

The Tribunal will make every effort to process appeals in a timely fashion and issue decisions expeditiously. With the cooperation of the parties and their attention to the procedures and policies outlined in this Manual, the Tribunal will be able to achieve this goal.

2.0 THE TRIBUNAL

The Tribunal is independent, in that it is not part of the Oil and Gas Commission which makes the decisions that can be appealed to the Tribunal, and it does not have any of the information or documents considered by the Commission when it made its decision. The Tribunal was created as a separate entity to ensure that it could hear appeals from the Commission's decisions in an independent and fair manner. The Tribunal is committed to providing a fair, impartial and independent appeal process.

Energy Resource Appeal Tribunal PRACTICE AND PROCEDURE MANUAL

Members

The Tribunal consists of a full-time chair, part-time vice-chair(s) and a number of part-time members. According to [Part 2 of the Administrative Tribunals Act](#), the chair is appointed by Cabinet after a merit-based process for an initial term of 3 to 5 years. The vice-chair(s) and other part-time members are appointed by Cabinet, in consultation with the chair, after a merit-based process for an initial term of 2 to 4 years. All of the members may be reappointed for additional terms of up to 5 years.

The Tribunal has a roster of highly qualified members including registered professional foresters, professional engineers, biologists, and lawyers with expertise in the areas of environmental and administrative law. They bring with them a wide range of backgrounds and perspectives.

All Tribunal members are required to faithfully, honestly and impartially perform their duties ([section 30 of the Administrative Tribunals Act](#)).

Role of the Chair

Under [section 9 of the Administrative Tribunals Act](#), the chair is responsible for the effective management and operation of the tribunal and the organization and allocation of work among the members.

Role of the Vice-Chair

The vice-chair acts as chair of the Tribunal in the chair's absence.

Composition of panels

[Section 26 of the Administrative Tribunals Act](#) states that the chair may organize the Tribunal into panels consisting of one or more members.

If members of the Tribunal hear an appeal as a panel, the panel has all of the powers and duties given to the Tribunal. Further, an order, determination or decision of a panel is deemed to be an order, determination or decision of the Tribunal.

When determining who will be on a particular panel, the chair will consider the background, qualifications and availability of the members. Oral hearings will be conducted by a panel of one or three members, depending on the length and complexity of the hearing. Written appeals are normally considered by a panel of one, often the chair of the Tribunal.

Quorum

[Section 26 of the Administrative Tribunals Act](#) provides that, if one member of a three-person panel is unable to complete the member's duties, the remaining members of the panel may continue to hear and decide the matter with the consent of the Tribunal's chair.

If the panel is comprised of one member, the hearing may continue with a new member provided that all parties consent.

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Withdrawal or disqualification of a Tribunal member on the grounds of bias

If the chair or a member of a panel becomes aware of any facts that would lead an informed person, viewing the matter reasonably and practically, to conclude that a member, whether consciously or unconsciously, would not decide a matter fairly, the member will be prohibited from conducting the appeal unless consent is obtained from all parties to continue. In addition, any party to an appeal may challenge a member on the basis of a real or reasonable apprehension of bias.

To raise an allegation of bias during a hearing, the party should make a motion to the panel promptly. All parties will be given an opportunity to make submissions on the motion before a decision is rendered.

If the panel determines that the allegation has merit, the panel member will disqualify him/herself and withdraw from the panel hearing the appeal, unless consent is obtained from all parties for that member to continue. If the parties do not consent, the remaining members of the panel may continue with the hearing, provided there are enough panel members to constitute a quorum. Alternatively, the hearing will be adjourned until a new member is selected by the chair.

Communicating and filing documents with the Tribunal

All appeal-related correspondence **must** be sent to the Tribunal, and addressed to the Chair, the panel chair (if the hearing has commenced), the Tribunal's Registrar, or staff in the Tribunal office. Correspondence must **not** be sent to individual Tribunal member's private residences, email addresses or offices. Tribunal members will not contact a party, accept personal telephone calls from a party, or attend private meetings with a party while that party is involved in the appeal process. Nor will a member discuss his or her reasons for a decision. Once a decision is rendered in an appeal, the decision "speaks for itself".

Rule 12 [Filing documents with the Tribunal]

To ensure that the appeal process is kept open and fair to the parties and interveners, any correspondence sent to the Tribunal in relation to an appeal must be copied to all other parties and interveners to the appeal. Correspondence sent to the Tribunal should include the appeal file number (found in the upper right hand corner of the Tribunal's correspondence).

Letters, submissions and all other materials (defined generally as "documents" in the Rules) may be sent to the Tribunal by mail, courier, fax, email or may be hand delivered. However, if the total number of pages being sent by email is greater than 10, a printed copy (hard copy) must also be sent to the Tribunal, unless the Tribunal approves otherwise.

If the Tribunal requires multiple copies of a document to be provided to the Tribunal, a copy of the document may be sent to the Tribunal by email or by fax; however, the required number of paper copies must also be provided to

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the Tribunal by mail, courier or hand delivery. The Tribunal will not make additional copies. In addition, any attachments emailed to the Tribunal must be in a format supported by the software used by the Tribunal (contact the Tribunal for the formats which may be used).

Rule 12 also sets out when a document is deemed to be delivered to the Tribunal. It states that if a document is sent to the Tribunal by fax or email, the document is not considered delivered until the transmission is received by the Tribunal, regardless of the date or time that it is shown to have been sent. Further, if a document is received by the Tribunal after the business day (defined in [Rule 1](#) [Definitions] as "8:30 am to 4:30 pm, Monday through Friday, excluding public holidays"), the document is deemed to be delivered on the next business day.

The Tribunal's powers and order-making authority

In addition to the common law powers given to tribunals to determine their own procedures and control their own processes, the Tribunal has been granted broad powers to make orders and decisions.

Under the *Administrative Tribunals Act*, the Tribunal has the power to make orders to "facilitate the just and timely resolution of an application the tribunal". In particular, [section 14 of the Administrative Tribunals Act](#) states that the Tribunal has the power to may make any order:

- (a) for which a Rule is made by the Tribunal;
- (b) for which a Rule is prescribed under [section 60 of the Administrative Tribunals Act](#); or
- (c) in relation to any matter that the tribunal considers necessary for purposes of controlling its own proceedings.

[Section 15 of the Administrative Tribunals Act](#) allows the Tribunal to make interim orders in an appeal. In addition, [sections 16 and 17 of the Administrative Tribunals Act](#) give the Tribunal the power to make consent orders and orders incorporating the terms of a settlement.

The Tribunal also has broad decision-making powers under the *Oil and Gas Activities Act*. The Tribunal may:

- (a) confirm, vary or rescind the decision appealed from, or
- (b) send the matter back, with directions, to the person who made the decision under appeal.

Tribunal office

The Tribunal shares an office and staff with the Environmental Appeal Board, the Forest Appeals Commission, and a number of other administrative tribunals. The combined office has a small full-time staff consisting of an Executive Director/General Counsel, Registrar, Office Administrator, Manager of Research and Mediation, Research Officer, and support staff. The office provides registry services, legal advice, research support, systems support,

Energy Resource Appeal Tribunal PRACTICE AND PROCEDURE MANUAL

financial and administrative services, training and communications support for the Tribunal and the other tribunals administered through the office.

The Tribunal's contact information is as follows:

Energy Resource Appeal Tribunal
4th Floor, 747 Fort Street
Victoria BC V8W 3E9
Phone: (250) 387-3464
Fax: (250) 356-9923
Website: www.bcerat.ca

The office's mailing address is:

Energy Resource Appeal Tribunal
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

3.0 PUBLIC PROCEEDINGS/FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

Public Proceedings

The appeal process is public in nature. In accordance with procedural fairness and [Rule 12](#) [Filing documents with the Tribunal], information provided to the Tribunal by one party or intervener must also be provided to all other parties and interveners to the appeal. Therefore, no party or intervener should expect that any information provided to the Tribunal in the context of the appeal will be kept private or confidential, except in special circumstances that are described below. Further, [section 41 of the Administrative Tribunals Act](#) requires oral hearings to be open to the public and for the Tribunal to make a document submitted in a hearing accessible to the public subject to certain exceptions.

Freedom of Information and Protection of Privacy

The Tribunal is subject to the [Freedom of Information and Protection of Privacy Act](#) and the regulations under that Act, as modified by [section 61 of the Administrative Tribunals Act](#). Information may be requested by a member of the public from an appeal file. The "appeal file" is the record of communications maintained by the Tribunal regarding an appeal, including all communications filed with the Tribunal, or delivered by the Tribunal to the parties or interveners, except for information:

- received in confidence pursuant to [section 42 of the Administrative Tribunals Act](#);
- received by the Tribunal as part of a settlement (mediation) process ([section 29 of the Administrative Tribunals Act](#));

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- falling under an exception in the *Freedom of Information and Protection of Privacy Act*; or
- falling under an exception in [section 61 of the Administrative Tribunals Act](#).

The names of parties, interveners, representatives and witnesses in an appeal will appear in the Tribunal's published decisions which are posted on the Tribunal's website, and may appear in its annual report. Some decisions of the Tribunal may also be published in legal journals and on law-related websites (e.g., LexisNexis® Quicklaw®).

Parties to appeals should be aware that information supplied to the Tribunal may be subject to public scrutiny and review.

4.0 STARTING AN APPEAL

What can be appealed and who can appeal

[Part 6 of the Oil and Gas Activities Act](#) sets out the decisions made by the Oil and Gas Commission that are appealable to the Tribunal. They include certain orders, declarations, findings of contravention, administrative penalties and permitting decisions in relation to an "oil and gas activity" such as geophysical exploration, the construction or operation of a pipeline, road construction, and the production, gathering, processing, storage or disposal of petroleum, natural gas or both (see further the definition of "oil and gas activity" in section 1(1) of the Act). Decisions made by a review official may also be appealed to the Tribunal.

It is important to note, however, that not everyone has the same right to appeal these decisions. The types of decisions that may be appealed are divided into:

- decisions that may be appealed by an "eligible person"; and,
- decisions that may be appealed by an owner of land on which an oil and gas activity is permitted to be carried out under this Act (a "land owner").

If a person does not fall within the group of persons allowed to appeal a certain type of decision under the *Oil and Gas Activities Act*, the Tribunal cannot accept the appeal. It is said that the person does not have "standing" to appeal.

Appeals by Eligible Persons

An "eligible person" is defined in [section 69\(1\) of the Oil and Gas Activities Act](#) as: an applicant for a permit, a permit holder or former permit holder, a person named in an order for non-compliance issued by an official under section 49(1) and a person who is subject to a finding of contravention by the Oil and Gas Commission under section 62.

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For some purposes, an eligible person also includes a land owner. However, land owners cannot appeal the same decisions as the other eligible persons and their right of appeal will be discussed separately below.

The decisions that are appealable to the Tribunal are set out in the definition of “determination” in section 69(1) of the *Oil and Gas Activities Act*. They include the following:

- issuance of a permit;
- refusal to issue a permit;
- suspension or cancellation of a permit or a permission specified in a permit;
- an amendment to a permit or refusal to amend;
- the suspension or cancellation of an authorization for an activity related to oil and gas activity permitted by a permit;
- a declaration that a permit, a permission specified in a permit, or an authorization held by the permit holder, is spent;
- decisions regarding the transfer of a permit or authorization;
- an order to carry out actions for the purposes of restoration or the protection of public safety in relation to a permit, a permission in a permit, or an authorization that is cancelled, expired, or declared spent;
- an order issued by an official or the Oil and Gas Commission to address risks to the environment, safety and/or resource conservation under Division 2 of Part 5;
- a finding of contravention under section 62; and,
- an administrative penalty.

According to [section 72\(1\)\(a\) of the *Oil and Gas Activities Act*](#), an eligible person may also appeal a review decision made under section 71 if the eligible person was a party to the review.

Appeals by Land Owners

An owner of land on which an oil and gas activity is permitted to be carried out under the *Oil and Gas Activities Act* may appeal fewer types of decisions (see [section 69\(1\)\(b\) of the *Oil and Gas Activities Act*](#)). They may appeal:

- a decision made by the Oil and Gas Commission under section 25 to issue a permit to carry out an oil and gas activity on the land of the land owner; and,
- a decision under section 31 to amend a permit, if the amendment changes the effect of the permit on the land of the land owner.

A land owner may also appeal a decision made by a review official under section 71 to vary a decision of the Oil and Gas Commission so that:

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- a permit is amended, if the amendment changes the effect of the permit on the land of the land owner; or
- a permit is issued to carry out oil and gas activities on the land of a land owner.

How to file an appeal

In accordance with [section 22 of the Administrative Tribunals Act](#) and [Rule 5](#) [Starting an appeal], to start an appeal a person must file a notice of appeal with the Tribunal. The Tribunal has created a notice of appeal form for each category of appellant: [Form 1](#) for land owners, and [Form 2](#) for eligible persons. If these forms are not used, the notice of appeal **MUST** be in writing and include:

- (a) the appellant's name, address, and telephone number;
- (b) if the appellant is represented by a lawyer or agent, the name and daytime/business telephone number of the representative;
- (c) the address to which all official letters and documents are to be sent, which may be the person's current postal address, fax, or email;
- (d) the identity of the decision that is being appealed (e.g., identify the name of the decision-maker, date of decision, what is the decision about);
- (e) a description of what is wrong with the decision and why it should be changed (the grounds for appeal and particulars);
- (f) a description of what the appellant wants the Tribunal to order at the conclusion of the appeal (the remedy sought); and
- (g) the signature of the appellant or the appellant's representative.

The Tribunal also asks for the following information to be included:

- an email address (if available) for the appellant and/or the appellant's representative;
- the date that the appellant was notified of the decision; and
- a copy of each decision being appealed.

A notice of appeal may be filed by regular mail, registered or certified mail, courier, fax, hand delivery, or email.

If the appeal is not commenced in accordance with the requirements of section 22 of the *Administrative Tribunals Act*, the Rules, and the *Oil and Gas Activities Act*, the Tribunal may not have jurisdiction to hear the appeal, regardless of the merits of the appeal.

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Time limit for filing the appeal

An eligible person must file an appeal within 30 days of the decision ([section 20 of the Oil and Gas Activities Act](#) and [section 24\(1\) of the Administrative Tribunals Act](#)).

A land owner must file a notice of appeal within 15 days of the day that the determination being appealed was made ([section 72\(7\) of the Oil and Gas Activities Act](#)).

The notices of appeal must be filed within the statutory appeal period unless the Tribunal grants the person an extension of time to file an appeal (see "Extension of time to appeal", below).

Extension of time to appeal

[Section 24\(2\) of the Administrative Tribunals Act](#) gives the Tribunal the power to extend the time limit for filing a notice of appeal if it is satisfied that "special circumstances" exist, even if the time for filing the appeal has already expired.

If a person is aware that he/she is filing an appeal after the appeal period has already expired, an application for an extension of time should be made at the same time as the appeal is filed. A request for an extension of time to file an appeal is attached at the end of Form 1 and Form 2 (the Notice of Appeal forms).

If the application attached to the form is not used, [Rule 6](#) [Extension of time to file an appeal] requires that the application for an extension of time include a complete notice of appeal (a notice of appeal that complies with the requirements of [Rule 5](#)), as well as the reasons for the delay in filing the appeal, and any other special circumstances that the applicant believes will support an extension of time.

As stated in section 24(2) of the *Administrative Tribunals Act*, the Tribunal must be satisfied that "special circumstances" exist in order to grant an extension of time to appeal. The Tribunal will take into consideration the length of the delay, whether there is a reasonable and credible explanation for the delay, and the prejudice to those affected by the delay. Other factors not identified could be relevant depending on the circumstances of the particular case.

The Tribunal will provide the other parties with the notice of appeal and the application for an extension of time in accordance with the procedure below, and may offer them with an opportunity to comment on the extension application. However, the Tribunal will not set down a hearing or take any further action on the appeal unless the extension of time to file an appeal is granted. If the extension is not granted, the appeal will be dismissed.

Acknowledgement/Notification of the appeal (and file number)

When the Tribunal receives a notice of appeal, with or without an application to extend the time to file the appeal, it will assign a file number to the appeal.

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In accordance with [Rule 7](#) [Acknowledgement of appeal], the Tribunal will then write to the appellant to acknowledge receipt of the appeal, and will notify the Oil and Gas Commission (the respondent), as it made the decision under appeal. The file number will appear in the upper right corner of the letter. A party must include this file number on all subsequent correspondence with the Tribunal.

The Tribunal will also send notification of the appeal to any additional parties (third parties) identified in [section 72 of the Oil and Gas Activities Act](#).

Incomplete (deficient) notice of appeal

If the notice of appeal does not contain the information required in [Rule 5](#), it is considered deficient. In accordance with [section 22\(4\) of the Administrative Tribunals Act](#), the chair (or the chair's delegate) will write to the appellant and identify:

- (a) the deficiencies; and
- (b) the date within which the deficiencies must be corrected.

If the deficiencies identified by the chair are not corrected by the date specified, the appeal may be deemed to be abandoned.

Filing a notice of appeal that is deficient will result in delays as the Tribunal will not take any action on the appeal until the deficiencies are corrected.

Rejection of a notice of appeal

In accordance with [section 31 of the Administrative Tribunals Act](#), the Tribunal will reject a notice of appeal (summarily dismiss the appeal) if it is clear that:

- (a) the notice of appeal was filed after the time limit for filing an appeal has expired and no extension of time is granted;
- (b) the appellant does not have standing to appeal; or
- (c) the Tribunal does not have jurisdiction over the subject matter of the appeal or the remedy sought.

As required by section 31 of the *Administrative Tribunals Act*, before making a decision to summarily dismiss an appeal, the Tribunal will give the appellant an opportunity to make submissions. The Tribunal may provide the respondent, and any other parties, with an opportunity to respond. It may also give interveners an opportunity to respond, depending on the circumstances.

When a notice of appeal is rejected, the Tribunal will provide the appellant with written reasons for its decision.

Objection to the appeal by parties

Under [section 31 of the Administrative Tribunals Act](#), the Tribunal may dismiss all or part of an appeal on the grounds that it is not within the Tribunal's jurisdiction any time after the appeal is filed.

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If a party has information or an argument that may call into question the Tribunal's jurisdiction over an appeal (e.g., no appealable decision was made, the appellant does not have standing, the appeal was filed out of time without an extension being granted, etc.), that information should be provided to the Tribunal as soon as possible in the appeal process in an "application to summarily dismiss the appeal". The application must include the information set out in [Rule 18](#) [General application procedure]. Failure to provide this information and to challenge jurisdiction as soon as possible in the process may result in an unnecessary hearing, at significant cost to all involved.

Before making a decision on the application, the Tribunal will give the appellant an opportunity to make submissions on the application. This is required under section 31 of the *Administrative Tribunals Act*. If the Tribunal dismisses all or part of the appeal, it must provide written reasons for its decision.

Summary dismissal of all or part of an appeal

In addition to the power of the Tribunal to reject/dismiss an appeal on the grounds of lack of jurisdiction or failure to file the appeal within the time limit (see above "Rejection of a notice of appeal"), [section 31 of the Administrative Tribunals Act](#) allows the Tribunal to dismiss all or part of an appeal at any time after the appeal is filed if the following apply:

- the appeal is frivolous, vexatious, trivial or gives rise to an abuse of process;
- the appeal was made in bad faith or filed for an improper purpose or motive;
- the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
- there is no reasonable prospect the appeal will succeed; or
- the substance of the appeal has been appropriately dealt with in another proceeding.

A party or intervener may apply for all or part of an appeal to be summarily dismissed in accordance with [Rule 18](#) [General application procedure]. As required by section 31 of the *Administrative Tribunals Act*, the Tribunal will give the appellant an opportunity to make submissions before the Tribunal makes its decision on the application. If the Tribunal dismisses all or part of the appeal, it will provide written reasons for its decision.

Representatives/legal counsel

According to [section 32 of the Administrative Tribunals Act](#) and [Rule 9](#) [Representation before the Tribunal], a party or intervener may represent him or herself (i.e., present their own case) in an appeal, or may be represented by legal counsel or an agent (spokesperson). Under Rule 9, there is certain information required from a representative. If a party or intervener has a representative, all correspondence in the appeal will be provided to the

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representative. It will be up to the representative to provide the party or intervener with the correspondence.

The Tribunal will make every effort to keep the process open and accessible to parties that are not represented by a lawyer.

Amending the Notice of Appeal (adding grounds for appeal)

The grounds for appeal presented in the original notice of appeal should be complete. However, the Tribunal recognizes that there may be occasions when additional grounds of appeal are identified after that time.

To ensure that the other parties have adequate notice of the new grounds for appeal and have an opportunity to prepare their respective cases, an appellant should file an amended notice of appeal with the Tribunal as soon as possible. Delay in notifying the Tribunal, and the other parties, of the new grounds may result in a postponement or adjournment of the hearing.

Stays pending the completion of an appeal

A stay has the effect of postponing the legal obligation to implement the determination or decision under appeal until the appeal is completed and the Tribunal issues its decision. For certain decisions under appeal, there is an automatic stay unless the Tribunal orders otherwise (see below). For other decisions under appeal, an appeal does not act as a stay but the Tribunal has the power to order a stay. This section describes the Tribunal's powers in relation to ordering a stay of a decision (or removing an automatic stay), pending the completion of an appeal. .

Automatic stay (administrative penalties)

When an administrative penalty, or the refusal to rescind an administrative penalty, is appealed, [section 72\(4\) of the Oil and Gas Activities Act](#) states that the decision is automatically stayed unless the Tribunal orders otherwise. To determine how to apply to have an automatic stay removed, see [Rule 18](#) [General application procedure], and [section 7.0 of this Manual](#) titled "Application for a stay or removal of a stay".

No automatic stay

With the exception of administrative penalties (above), an appeal does not operate as a "stay" of the decision under appeal unless the Tribunal orders otherwise: the decision continues to be valid and enforceable. However, [section 72\(3\) of the Oil and Gas Activities Act](#) allows the Tribunal to order a stay of the decision under appeal pending the Tribunal's final decision on the merits of the appeal.

A person may apply for a stay of the decision in accordance with [Rule 18](#) [General application procedure], and the procedure described in [section 7.0 of this Manual](#), below.

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Disclosure of the respondent's "record of decision"

Rule 8 [Delivery of the respondent's "record of decision"] requires the Oil and Gas Commission to provide a copy of its record of decision within **14 calendar days** after it is given notice of the appeal by the Tribunal. The record of decision consists of:

- the full determination and, where applicable, the full review decision being appealed, including a copy of the determination that was reviewed;
- the respondent's reasons for decision and/or review (if in a separate document); and, if the appeal is by a land owner, it includes any:
 - i. any submissions made by the land owner to the respondent under sections 22(5) or 31(2) of the *Oil and Gas Activities Act*; or,
 - ii. reports submitted by the permit holder under section 24(1)(c) or 31(6) of that Act.

The Tribunal requires this information to be provided by the respondent in an expeditious manner to ensure that the Tribunal has sufficient information to make any decision on its jurisdiction over the appeal, to determine whether there are any preliminary issues to be determined, and to assess the type of hearing that will be most appropriate for the appeal (written or oral). It also assists the appellant to prepare for either a settlement meeting or for the hearing.

If more than 1 document is provided to the Tribunal as part of the record of decision, the record of decision must include a table of contents and the documents must be organized by either numbering all documents consecutively, or by dividing the documents using tabs.

The documents included with the record of decision do not need to be provided again in advance of the hearing. The panel that decides the appeal will have a copy of the record of decision.

5.0 PARTIES AND INTERVENERS

Parties to the appeal

There are always at least two parties to an appeal: an appellant and a respondent. The "appellant" is the party that appeals the decision of the Oil and Gas Commission by filing a notice of appeal with the Tribunal. The "respondent" is the Oil and Gas Commission: the Oil and Gas Commission will be "responding" to the appeal.

Other parties (a land owner or permit holder) must be added in the circumstances set out in section 72(5) of the *Oil and Gas Activities Act*. These other parties are called "third parties".

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In addition, the Tribunal may allow a person to intervene in an appeal. If so, this person is referred to as an “intervener”.

Interveners & adding interveners to an appeal

Interveners are generally individuals or groups that do not meet the criteria to become a party but have sufficient interest in, or some relevant expertise, in relation to the subject matter of the appeal.

The Tribunal has the authority to allow a person to intervene in an appeal. A person seeking to intervene in an appeal must meet the test set out in [section 33 of the *Administrative Tribunals Act*](#). That is:

- (a) whether the proposed intervener can bring a valuable contribution or bring a valuable perspective to the appeal; and
- (b) how the potential benefits of the intervention outweigh any prejudice to the parties caused by it.

An application for intervener status in an appeal must conform with [Rule 18](#) [General application procedure] and [Rule 11](#) [Adding or removing interveners to an appeal]. Specifically, the application must include the person’s name and contact information, and the amount of participation sought in the appeal (e.g., to make written submissions only, to present evidence on a particular subject or issue, the ability to cross-examine witnesses, the ability to present opening and closing arguments).

The Tribunal also requires the person to provide a description of:

- (a) the issues the person seeks to address;
- (b) the person’s expertise or interest in a particular subject; and
- (c) the particular perspective that the person will provide to the Tribunal and whether it is different from the perspectives of the parties.

The application should be made as early as possible in the appeal process. If it is made close to the hearing date, the Tribunal will consider whether there are sound reasons for the delay.

Prior to deciding whether to grant the application to intervene, the Tribunal will provide all parties with an opportunity to make submissions on the application.

When deciding whether to add someone as an intervener in an appeal, the Tribunal will consider whether the person’s intervention will assist the Tribunal by offering evidence or argument relevant to the appeal, whether their participation will unnecessarily delay the appeal, whether their evidence or argument will repeat or duplicate evidence or argument presented by other parties, whether the parties will be prejudiced by the intervention, and any other factors which are relevant in the circumstances or required by the legislation.

Under section 33 of the *Administrative Tribunals Act*, the Tribunal may limit or impose terms and conditions on the participation of an intervener in an appeal.

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Accordingly, if the application is allowed, the Tribunal will advise the person of any terms, conditions or limitations placed on the person's intervention in the appeal.

If the Tribunal allows an intervener to take part in the hearing of an appeal, the Tribunal will advise the parties and any other interveners of this decision, and will specify the extent to which the intervener will be permitted to participate in the hearing.

Applying to remove an intervener

A party may apply to the Tribunal to remove an intervener from the appeal in accordance with [Rule 11](#).

The application must explain why the intervener ought to be prevented from participating in the appeal. The application should be made as soon as possible in a proceeding to avoid unnecessary expense and delay.

Change in contact information

In accordance with [Rule 10](#) [Change in contact information], all parties and interveners must immediately notify the Tribunal of any change to their address for delivery or other contact information. This will ensure that the Tribunal is able to effectively communicate with all parties and interveners throughout the appeal process.

Delivering documents to the parties and interveners

Delivery between parties & interveners

According to [Rule 13](#) [Delivering documents to parties and interveners] anything that is to be sent/delivered to another party or intervener, must be sent to their "address for delivery" unless the party or intervener consents to an alternative location or the Tribunal orders otherwise. An address for delivery may be the person's current postal address, fax number, or email address.

If an address for delivery has not been specifically identified by a party or intervener, the definition of "address for delivery" in [Rule 1](#) [Definitions] allows this to be "inferred from the party or intervener's usual method of delivering documents to the Tribunal and/or to the other parties and interveners".

Rule 13 sets out certain terms and conditions for delivering documents to another party or intervener. For example, if a party or intervener does not consent to the delivery of documents by fax or email, the Tribunal may make an order directing that documents be delivered by fax or email, subject to any terms, conditions or limitations that are appropriate in the circumstances. This will be considered by the Tribunal if communicating with the party or intervener is time sensitive and/or if there have been problems with delivery of documents through their preferred method. If the Tribunal orders delivery by fax or email, the Tribunal will attempt to advise the person of this decision by telephone.

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Delivery by the Tribunal to the parties and interveners

If the Tribunal is “required” to serve, deliver or otherwise provide a document under an enactment, [sections 19 and 20 of the *Administrative Tribunals Act*](#) explain how the Tribunal is to effect that service, and when failure to properly serve a document may invalidate a proceeding. Under section 19(5), a person may dispute that he or she received the document from the Tribunal within the deemed date of delivery due to certain prescribed circumstances. Rule 13(5) requires this dispute to be provided to the Tribunal “as soon as practicable”.

If the Tribunal is not “required” to serve a document, Rule 13 applies to the Tribunal.

When delivery of a document to a party or intervenor is complete

Rule 13 also explains when a document delivered to a party or intervenor by another party or intervenor is deemed to be complete. For instance, if a document is not received by a person within the business day (defined in Rule 1 [Definitions] as “8:30 am to 4:30 pm, Monday through Friday, excluding public holidays”, it is deemed to be delivered on the next business day.

For documents “required” to be sent by the Tribunal, section 19(2) and (3) of the *Administrative Tribunals Act* establishes when that document is deemed to be received by the recipient, whether it is sent by electronic transmission or by regular mail. Section 20 of the *Administrative Tribunals Act* describes the situations when the Tribunal’s failure to serve the document in accordance with section 19 does not invalidate the proceeding.

If the Tribunal is not “required” to serve a document, Rule 13 applies to the Tribunal.

6.0 APPLICATIONS: GENERAL

There are a multitude of different orders, directions, or decisions that can be sought by the parties during the course of an appeal. [Sections 14 and 15 of the *Administrative Tribunals Act*](#) give the Tribunal general order-making powers. In addition to these general powers, there are various specific powers given to the Tribunal in the *Administrative Tribunals Act*, the *Oil and Gas Activities Act*, and the common law.

To ask for a particular order, decision, direction or exercise of discretion, a party or intervenor must make an application, in writing. [Rule 18\(2\)](#) sets out the basic requirements for making an application to the Tribunal. They are:

- (a) the grounds (the reasons) for the application;
- (b) the relief requested (the nature of the order or direction);
- (c) whether other parties and interveners agree to it (if known); and
- (d) any evidence to be relied upon.

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When making an application, you should be aware that applications should be organized. This will not be difficult for a relatively short, simple application, such as an application to extend a deadline. However, for applications that require supporting documents, Rule 18(2) requires the supporting documents be organized by either numbering all documents consecutively, or by dividing the documents using tabs.

If an application is contested and/or may raise issues of fairness, the Tribunal will establish a submission schedule to allow the other parties to be heard. Interveners may be offered an opportunity to be heard, depending upon the terms, conditions or limitations placed on their intervention in the appeal, and how the application may impact the intervenor.

Applications are normally conducted in writing and decided by the chair of the Tribunal. If the subject matter of the application is such that oral evidence or argument would be helpful and appropriate, the parties may apply to have all or part of the application heard orally, by teleconference, or by videoconference (if available).

Note: Submissions and documents provided to the Tribunal during preliminary applications (e.g., an application for a stay) are **not** provided to the panel that hears the merits of the appeal. Therefore, parties and interveners that want to refer to previous submissions or documents must resubmit them during the written or oral hearing process.

7.0 APPLICATION FOR A STAY OR REMOVAL OF A STAY

The decision under appeal remains valid and enforceable unless the Tribunal makes an order to “stay” the decision. A stay prevents the decision from taking effect until the appeal is decided: it has the effect of postponing the legal obligation to implement all or part of the decision or order under appeal.

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Automatic Stay (Administrative Penalties)

When an administrative penalty is appealed, [section 72\(4\) of the *Oil and Gas Activities Act*](#) states that the penalty decision is automatically stayed unless the Tribunal orders otherwise.

If a party wishes to have the stay removed and the penalty take effect during the course of the appeal, an application must be made to the Tribunal. The party must apply in accordance with [Rule 18](#) [General application procedure]. The applicant must explain why the administrative penalty ought to be enforced, and what harm may result if the stayed is not removed, and what arrangements may be made to compensate the appellant should the appeal of the penalty be successful.

The Tribunal will provide the other parties to the appeal with an opportunity to reply.

Application for a stay (all other decisions)

With the exception of administrative penalties (above), section 72(3) of the *Oil and Gas Activities Act* states that an appeal to the Tribunal does not automatically prevent the decision under appeal from taking effect.

Section 72(3) of the *Oil and Gas Activities Act* allows the Tribunal to order a stay of the decision under appeal pending the Tribunal's final decision on the merits of the appeal.

A party seeking a stay must apply to the Tribunal in accordance with [Rule 18](#) [General application procedure]. When an application for a stay is made, the parties will be asked to address the test set out by the Supreme Court of Canada in *RJR-Macdonald Inc. v. Canada (Attorney General)* (1994), 111 D.L.R. (4th) 385. That is:

- whether the appeal raises a serious issue;
- whether the applicant for a stay will suffer irreparable harm if a stay is refused; and,
- whether the harm that the applicant will suffer if a stay is refused exceeds any harm that may occur if a stay is granted (the "balance of convenience" test).

This test from *RJR-Macdonald Inc. v. Canada (Attorney General)* was adopted by the Tribunal on June 27, 2011 in *Daniel Kerr v. Oil and Gas Commission*, (Decision No. 2011-OGA-005(a))(unreported). The test has been adopted by the Tribunal in every stay decision since then.

When addressing the second issue of "irreparable harm", the party seeking the stay must explain what harm it will suffer if the stay is refused, and why this harm is "irreparable" (i.e., it could not be fixed/remedied if the party ultimately wins the appeal).

When addressing the issue of "balance of convenience", the party applying for the stay must show that it will suffer greater harm if the Tribunal refuses to

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grant a stay, than the harm that would be suffered by the other parties or the environment if the Tribunal grants the stay.

The Tribunal will notify all parties of the application and provide them with an opportunity to respond to the application. In particular, the other parties will be asked to outline their positions on whether a stay should be granted, and they will also be asked to address the issues identified above: serious issue, irreparable harm and the balance of convenience.

Normally an application for a stay will be conducted in writing, rather than in an oral hearing.

The Tribunal will provide written reasons for its decision.

8.0 SCHEDULING A HEARING

Type of appeal hearing

Under [section 36 of the Administrative Tribunals Act](#) and [Rule 19](#) [Scheduling a hearing], an appeal hearing may be conducted by way of an in-person (oral) hearing, written submissions (a written hearing), telephone or videoconferencing, or a combination thereof. The Tribunal will determine the appropriate type of hearing for the appeal, and will provide a written notice to the parties and interveners. Currently, the Tribunal does not have videoconferencing available in its office or hearing room.

When considering the type of hearing to be held, the Tribunal will give careful consideration to balancing the process to be followed with the nature and complexity of the appeal, any views expressed by the parties, the likelihood that there will be conflicting evidence and/or credibility issues that will need to be assessed, the number of parties involved in the appeal, whether there are any language or literacy barriers to a particular type of hearing, and the potential for community interest in the appeal.

If there are issues of credibility, complex issues that require oral evidence, or other circumstances that warrant having the parties, interveners and the panel to be in the same room, the Tribunal will schedule an oral hearing. If there are serious impediments to holding an in-person hearing in one location, the Tribunal will consider an application for a hearing by videoconference (if available). Depending on the circumstances, the requesting party(s) may be required to bear all or part of the costs of videoconferencing. Alternatively, the Tribunal may consider dividing the hearing between two different locations.

When a hearing by written submission is being considered for a particular case, the chair may request input from the parties before making a decision on whether to proceed in this manner.

If a party wants to request a particular type of hearing, the request should be forwarded to the Tribunal within a reasonable time after receipt of the complete notice of appeal or amended notice of appeal. The request should set out the

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reasons in support of the type of hearing proposed. (For more information about written and oral hearings, see sections 11.0 and 12.0, below.)

Request for expedited hearing

The Tribunal will, where possible, accommodate applications for an expedited hearing. An application must be made in accordance with [Rule 18](#) [General application procedure]. To ensure that the application proceeds expeditiously, it should clearly explain why the matter must be heard quickly, and provide the following information:

- (a) the likelihood that there will be issues of credibility and/or technical evidence at the hearing;
- (b) the desired type of hearing (oral, written, other);
- (c) available dates for an expedited hearing; and
- (d) an estimate of the number of days that would be required if an oral hearing is held.

When making a decision on the application, the Tribunal will consider the reasons given for the urgency, the other parties' right to proper notice of the appeal and of the appeal hearing, and the rights of other appellants who are awaiting hearings.

Hearing *de novo*

The *Oil and Gas Activities Act* does not expressly state that the Tribunal may conduct a "new hearing" of the matter before it. However, following a detailed analysis of the legislation in [Daniel Kerr v. Oil and Gas Commission, \(Decision No. 2011-OGA-005\(b\)\)\(December 12, 2011\)](#), the Tribunal found that its jurisdiction goes beyond a review of the decision under appeal, and is more akin to an appeal *de novo*. It concludes at paragraph 58:

The Tribunal finds that the Legislature intended for appeals of questions regarding oil and gas activities to come before the Tribunal, and for the Tribunal to have the authority to consider those matters from its own specialized perspective, with the courts providing a supervisory role over the Tribunal. The Tribunal may consider the decision under appeal, the record before the original decision-maker, any relevant new evidence, and submissions on the facts, law and jurisdiction. The only limiting factor is in respect of the grounds for appeal. Further, there is no indication that the Legislature intended the Tribunal to show deference to the Commission's determinations.

The Tribunal has followed this reasoning in subsequent cases.

Therefore, written and oral hearings are generally conducted as a "new hearing". This means that, in addition to reviewing the evidence and decision of the Oil and Gas Commission, the Tribunal may hear new evidence and argument that was not before the Oil and Gas Commission, make findings of fact on the evidence presented to it, and decide questions of law.

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However, the Tribunal also has the discretion to conduct the appeal as an “appeal on the record”; that is, an appeal based solely on the information that was before the Oil and Gas Commission. If a party wants the appeal to be conducted on the record, an application must be made to the Tribunal as soon as possible in the appeal process and in accordance with Rule 18 [General application procedure].

Joining or consolidating appeals

In accordance with [section 37 of the Administrative Tribunals Act](#) and [Rule 14](#) [Joining or consolidating appeals], when the Tribunal considers that two or more appeals are related to each other, involve the same or similar questions, or involve some of the same parties, it may combine the appeals to be heard together, or the Tribunal may direct that one appeal be heard immediately after the other. The goal of joining appeals is to make the appeal process more efficient.

The Tribunal will notify all parties if it decides to join the appeals to be heard together. A group appeal file number will be given to the joined appeals.

Objections may be made to the Tribunal, in writing, as soon as practicable.

If the Tribunal joins a number of appeals against one decision or order, the appellants may appoint one spokesperson for the group and make a joint presentation of evidence and argument. The Tribunal encourages such actions as they will lead to a more efficient and effective hearing process.

9.0 DISPUTE RESOLUTION & SETTLEMENT

The Tribunal encourages parties to resolve the issues underlying the appeal at any time in the appeal process. If the parties advise the Tribunal that they have reached a settlement of all or part of an appeal, the Tribunal must order that all or part of the appeal is dismissed ([section 17\(1\) of the Administrative Tribunals Act](#)). If the parties are unable to resolve the appeal on their own, the Tribunal may provide the parties with some assistance.

The purposes of dispute resolution, also referred to as facilitated settlement, are to resolve the issues underlying the appeal and avoid the need for a formal hearing. The Tribunal’s procedures for assisting in dispute resolution are as follows:

- early screening of appeals to determine whether the appeal may be resolved without a hearing; and
- pre-hearing conferences (discussed further under “Oral Hearing Procedure”).

If a more formal mediation process is desired by the parties, [section 28 of the Administrative Tribunals Act](#) and [Rule 16](#) [Facilitated settlement] allow the Tribunal to appoint Tribunal members or staff to conduct a facilitated settlement. The Tribunal will not convene a settlement meeting (mediation) unless all parties to the appeal agree to participate.

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In advance of the meeting, the Tribunal may require that the parties sign an agreement to ensure that:

- (a) the parties are willing to participate in the facilitated settlement process;
- (b) any representative of a party has authority to settle the appeal; and
- (c) the information exchanged during the facilitated settlement process will be kept confidential.

If a Tribunal member conducts the facilitated settlement process and the appeal is not resolved, that member will not sit on the panel that hears the merits of the appeal without the written consent of all parties.

If the parties reach a mutually acceptable agreement, the parties may set out the terms and conditions of their settlement in a consent order, which is submitted to the Tribunal for its approval (see [Rule 17](#) [Consent orders], and “Consent orders” in the next section, below). Alternatively, the appellant may withdraw the appeal at any time (see “Withdrawing or abandoning an appeal” under section [15.0 of this Manual](#). See also the [Information Sheet](#)).

Confidentiality of settlement discussions

In accordance with [section 29 of the Administrative Tribunals Act](#), any information received by any person in the course of attempting to reach a settlement of an appeal is confidential and may not be disclosed or admitted in evidence, except with the consent of the parties.

Consent orders

The Tribunal may make consent orders on any matter under [section 16 of the Administrative Tribunals Act](#), provided that the order is consistent with the enactment governing the appeal.

In addition, the Tribunal may make orders specifically related to settlements under [section 17 of the Administrative Tribunals Act](#). If the parties reach an agreement that will resolve the issues in the appeal and want the Tribunal to endorse the agreement, this may be done by way of a consent order. Section 17(2) of the *Administrative Tribunals Act* states that the Tribunal may authorize an order that includes the terms of settlement if it is satisfied that the order is consistent with the enactments governing the appeal.

Under [Rule 17](#) [Consent orders], consent orders must contain the information consented to by the parties, be signed by the parties and submitted to the Commission for its consideration and approval. The date must be left blank and will be filled in if the Tribunal endorses the order.

If the Tribunal declines to make the order, both sections 16 and 17 of the *Administrative Tribunals Act* require the Tribunal to provide the parties with reasons for doing so.

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If the order is authorized by the Tribunal, the Tribunal requires an electronic version of the unsigned consent order to be provided to the Tribunal in Word format, for posting on the Tribunal's website.

When the Tribunal approves a consent order, all or part of the appeal, as specified in the order, will be closed. The Tribunal will provide a copy of the approved order to the parties. The consent order will also be posted on the Tribunal's website and may be included in the Tribunal's annual report.

10.0 OBTAINING DOCUMENTS BEFORE THE HEARING

Each party and intervener is responsible for obtaining the documents needed to support their case. If a party or intervener does not have certain documents that they need, they must ask the person or persons in possession and control of the documents to voluntarily provide them. The Tribunal encourages parties to co-operate in the exchange of information as soon as possible in the appeal process to ensure that the matter proceeds in an informed and expeditious manner. The failure or refusal to produce documents prior to a hearing may result in delays.

If the request for the voluntary production of documents is refused, the party or intervener may apply to the Tribunal for an order.

Application for an order to produce documents or other things

[Section 34\(3\)\(b\) of the *Administrative Tribunals Act*](#) gives the Tribunal the power to make an order, at any time before or during a hearing, requiring the production of documents or other things that are admissible and relevant to an issue in the appeal, and in a person's possession or control. As a result, if the documents sought are in the possession and control of the Oil and Gas Commission, a request under the *Freedom of Information and Protection of Privacy Act* is **not** required.

An application for the production of documents or other items must be made in accordance with [Rule 18](#) [General application procedure]. To ensure that the application proceeds in an expeditious manner, it should include the following information:

- (a) the name of the person in possession or control of the documents or things;
- (b) a reasonably detailed description of the documents or things that would enable a reasonable person to know what documents, things or information is being sought;
- (c) the reasons why such materials are relevant to the subject matter of the appeal; and
- (d) the attempts made to have the person voluntarily provide the document or thing. An order will not be granted unless the party or

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participant has first asked the person to voluntarily produce the documents or things.

If sufficient detail is not provided in the application, the Tribunal may ask for additional information.

When deciding whether to issue an order for pre-hearing disclosure of documents or other things, the Tribunal will consider whether the documents are relevant to an issue in the appeal, whether they are subject to disclosure protection under [section 29 of the Administrative Tribunals Act](#), and any other factors that the Tribunal considers relevant.

It is important to note that failure or refusal to produce documents prior to the hearing may result in delays and, possibly, a postponement or adjournment of the hearing.

If an order for the production of documents is granted, the party requesting the order will be responsible for serving it on the person.

A person who is subject to the order may apply to the Tribunal to amend the terms of the order or to have it cancelled. The application may be made before or during the hearing. If the Tribunal is satisfied that the documents are not in the person's possession or control, are not relevant to the appeal, or are protected by a privilege at law, the Tribunal may cancel or vary the order.

11.0 WRITTEN HEARING PROCEDURE

For specific written hearing requirements, see [Rule 22](#) [Written hearings].

Scheduling written submissions

In some cases, the Tribunal will decide that an oral hearing is not required to fairly decide the issues in an appeal. [Section 36 of the Administrative Tribunals Act](#) allows the Tribunal to conduct an appeal on the basis of written submissions.

Written hearings are normally scheduled in cases where there are no language or literacy barriers for a party or intervener, where credibility of the parties or witnesses is not a significant factor in the appeal, there is no dispute about material facts, the issues to be decided have been dealt with in previous appeals, or there are purely legal questions to be decided.

If the Tribunal determines that the appeal can be heard fairly by way of written submissions, it will provide the parties with a submission schedule. In making the schedule, the Tribunal will ensure that each party to the appeal is given an opportunity to review the written submissions from the other parties, and is given an opportunity to respond to those submissions from parties adverse in interest. The submissions will normally be scheduled to proceed in the following order:

- (1) appellant's submissions

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(2) respondent's and third party's submissions

(3) appellant's submissions in reply (no new evidence is to be included)

In accordance with Rule 22, all submissions must be delivered to the Tribunal office by the dates specified, unless the Tribunal grants an extension of time (see "Extension of time to make submissions" below). Failure to provide submissions on an appeal may result in the appeal being dismissed (if it is the appellant's failure), or a decision being made on the appeal without further notice (if it is another party or intervener's failure). (See [Rule 20](#) [Failure to participate in a hearing], and the information below)

Submissions must be copied to the other parties and interveners, as well as to the Tribunal, in the quantities specified. Once the deadlines have expired for making submissions, the written hearing is over.

Written hearings are normally decided by one member of the Tribunal, often the chair.

How to apply for a written hearing

A party may request a written hearing in accordance with [Rule 18](#) [General application procedure]. The request should be made to the Tribunal as soon as possible in the process, and state: whether there are any issues of credibility to be decided, whether the material facts are in dispute, whether the issues to be decided have been dealt with in previous appeals, and/or whether the appeal raises purely legal questions.

Content of submissions

If an appeal is conducted by written submissions, the parties are required to present their **entire** cases in writing ([Rule 22](#)). This means that all evidence (which includes all means of proof including correspondence, maps, charts, graphs, affidavits, studies, reports, etc.), legal authorities, and argument that the party wants the Tribunal to consider must be included in the submissions (for further information see section [12.2 "Evidence", below](#)). Submissions and documents that were provided to the Tribunal during preliminary applications (e.g., an application for a stay) are **not** provided to the panel that hears the merits of the appeal. Therefore, parties and interveners that want to refer to previous submissions or documents must resubmit them with during the written hearing process.

It is important to note that the Tribunal does not receive the information considered by the Oil and Gas Commission. To ensure that the Tribunal considers those materials, a party must submit them to the Tribunal as part of their case or ensure that one of the other parties or participants does so.

In addition to the materials that were before the Oil and Gas Commission, the Tribunal may consider new evidence and argument: evidence and argument that was not before the Oil and Gas Commission.

Although expert evidence is not normally provided in a written hearing, if an expert report is to be provided, the deadlines and requirements for notice set

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out in [Rule 27](#) [Expert evidence] apply. (See also the heading “Notification of expert evidence” in [section 12.1 of this Manual](#)).

An appellant’s written submission should contain all evidence and argument in support of the grounds for appeal. It should also explain why the decision that has been appealed should be different, and how it should be changed (what remedy is being sought). A respondent’s submission should provide all evidence and argument in support of the decision being appealed, and explain why the appeal should be dismissed. A third party’s submissions should explain that party’s position on the evidence and argument provided by the appellant. An intervener may address the submissions presented by the other parties in accordance with any terms or conditions set out by the Tribunal. Any party may suggest alternatives to the decision being appealed or recommend additional terms or conditions.

Where there is more than one evidentiary document or legal authority provided with the written submission, Rule 22 requires the documents and authorities to be numbered consecutively, or divided into tabs. This allows the party to easily reference the attached documents and authorities in their submission.

Prior to making a decision, the Tribunal will consider all of the submissions, weigh the evidence provided, and apply the correct burden of proof (see “Burden of Proof”, below).

Notification of expert evidence (Rule 27)

In some cases, a party (or intervener if approved by the Tribunal) may wish to provide an expert report as part of their case. [Rule 27](#) [Expert evidence] sets out the requirements for providing notice of an expert report. These requirements are further described in [section 12.1 of this Manual](#) under “Notification of expert evidence”).

Joint books of documents and legal authorities

Parties should refrain from photocopying a legal authority or document already provided to the Tribunal in the submissions of another party. Photocopying of legislation or policies should be limited to the sections that are considered pertinent and necessary to the Tribunal’s decision on the issues raised in the appeal. To reduce the unnecessary duplication of legal authorities and other documents, the Tribunal asks that parties consider providing a joint book of documents and legal authorities to the Tribunal where possible.

Additional information requested by the Tribunal

Upon receipt of the written submissions, the panel considering the appeal may find that further information is required from one or more of the parties in order to make an informed decision on the appeal.

If the panel requests additional information from one or more of the parties, all parties will have an opportunity to respond to that information.

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Extension of time to make submissions

If a party or intervener is not able to deliver their submissions by the date specified by the Tribunal, they must apply for an extension of time. The application should be made prior to the specified deadline.

In accordance with [Rule 18](#) [General application procedure], the application must be in writing and include the following information:

- (a) the reasons for extension;
- (b) the length of the extension;
- (c) whether the other parties to the appeal consent to the extension; and
- (d) any evidence to be relied upon.

If the other parties do not consent to the extension, they may be provided with an opportunity to make submissions on their position with respect to the request.

When deciding whether to grant an extension, the Tribunal will consider the adequacy of the reasons given for the extension, any prejudice to the other parties, and any environmental or other impacts that may result from an extension.

If an extension of time is granted to one party or intervener, the submission schedule for the other parties and interveners will be similarly extended unless the circumstances do not warrant a similar extension. The Tribunal will inform all parties of the revised schedule, in writing.

Failure to file submissions

In accordance with [Rule 20](#) [Failure to participate in a hearing], if the appellant has been given timely notice of the submission schedule and fails to deliver its written submissions by the specified date, the Tribunal may proceed with the hearing, dismiss the appeal as abandoned, or make any order appropriate in the circumstances..

If the respondent, third party or an intervener has been given timely notice of the submission schedule and, without advance written notice and reasonable explanation, fails to deliver written submissions by the specified date, the Tribunal may proceed to make a decision without further notice to the party or intervener.

Application to cross-examine

If it becomes apparent that credibility is a significant factor in the appeal the panel may, on its own initiative or at the request of a party, require evidence to be presented at an oral hearing to allow cross-examination of some or all of the witnesses.

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If a party seeks to cross-examine an affiant on an affidavit included in the written submissions of another party, [Rule 22](#) requires the party to apply to the Tribunal in accordance with [Rule 18](#) [General application procedure].

Role of precedent (previous decisions of the Tribunal)

Although the Tribunal may be bound by the decisions of certain courts, it is not required to follow (i.e., is not bound by) its past decisions or the decisions of other administrative agencies. While prior decisions of the Tribunal may indicate how Tribunal members will view particular types of cases, as a matter of law, the Tribunal must decide each case on its own merits.

Burden of proof

The general rule is that the burden or responsibility for proving a fact is on the person who asserts it. The fact is to be proved on a “balance of probabilities”.

Public access

In written hearings, the evidence, written submissions and decisions arising from the appeal are available to the public as described in [section 3.0 of this Manual](#).

12.0 ORAL HEARING PROCEDURE

For specific oral hearing requirements, see [Rule 21](#) [Oral hearings].

12.1 Pre-hearing

Scheduling an oral hearing

If the Tribunal decides that an appeal will be conducted by full oral hearing, it will ask the parties and interveners for an estimate of the amount of time that will be required for an oral hearing and their availability. The Tribunal will attempt to accommodate the parties’ schedules unless:

- there is some other reason to schedule a hearing within a particular time-frame; or
- the parties cannot agree on a specific date.

In these circumstances, the Tribunal may set the hearing date without further consultation with the parties.

An oral hearing may be held at the Tribunal office in Victoria or any other location in the Province. The location of the hearing will be determined on a case-by-case basis. Requests to have a hearing conducted in a particular location will be considered by the Tribunal. Hearings conducted outside of Victoria are often held in meeting or conference rooms in hotels.

In accordance with [Rule 19](#) [Scheduling a hearing], the Tribunal will provide the parties and interveners with a Notice of Hearing, confirming the date, time

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and venue for the hearing. If there is some impediment to providing this notice in the usual way, [section 21 of the Administrative Tribunals Act](#) allows notice of hearing by publication.

Scheduling a hearing by telephone conference call

If all or part of an appeal will be held by way of a telephone conference call, the Tribunal will set the date, time and dial-in information for the conference call, and notify the parties and interveners of these details. It will also advise of any special requirements or conditions ([Rule 19](#)).

Scheduling a hearing by videoconference

If all or part of an appeal will be held by way of a videoconference, the Tribunal will set the time, date, and place(s) for the hearing, and provide written notification to the parties and interveners. It will also advise of any special requirements or conditions ([Rule 19](#)). Currently, the Tribunal does not have videoconferencing capabilities in its office or hearing room.

Statement of Points and exchange of documents

In order to facilitate identification of the main issues and arguments in an appeal and ensure the hearing proceeds in an efficient and expeditious fashion, [Rule 21\(1\)](#) requires each party to provide pre-hearing submissions and documents. The pre-hearing submissions are referred to as a Statement of Points. The Statement of Points is intended to be a summary of the case that the party will be presenting at the hearing. It is to include the party's positions on the main issues, the party's witness list (which should include the party if the party will be testifying on his or her own behalf), and the legal authorities that will be relied upon at the hearing.

In addition, Rule 21 requires all parties to provide a copy of the documents that they will be referring to, or relying upon, at the hearing. It should be noted that submissions and documents that were provided to the Tribunal during preliminary applications (e.g., an application for a stay) are **not** provided to the panel that hears the merits of the appeal. Therefore, parties and interveners that want to refer to previous submissions or documents must resubmit them with during the Statement of Points process.

Under Rule 21, any affidavit evidence that will be relied upon at the hearing must also be provided with the Statement of Points. If a party seeks to cross-examine on an affidavit, the party must provide written notice of this request within a reasonable time after receiving the affidavit.

Unless the Tribunal directs otherwise, two copies of the appellant's Statement of Points and documents must be provided to the Tribunal, and one copy to each party and intervener, at least **30** calendar days prior to the commencement of the hearing. The respondent, and all other parties to the appeal, must also provide two copies of their respective Statements of Points and documents to the Tribunal, and one to each party and intervener, at least

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15 calendar days prior to the commencement of the hearing unless the Tribunal directs otherwise.

In addition, pursuant to Rule 21(6), all parties and participants must bring one additional copy of all documents to the hearing (excluding legal authorities and Statements of Points) if the documents will be referred to or relied upon at the hearing. This copy will be provided to the official recorder and marked as an exhibit, if and when required.

As a matter of practice, the Tribunal will send a letter to the parties confirming the due dates for each party's Statement of Points and documents, and the quantities required. The Tribunal may alter the schedule if the circumstances warrant doing so.

Pursuant to Rule 21, the Tribunal may require interveners to provide a Statement of Points and documents in advance of the hearing. If so, it will notify the interveners in writing.

If a party fails to file a Statement of Points in accordance with the Rules, the Tribunal may take any action set out in [section 18 of the Administrative Tribunals Act](#) or in [Rule 3](#) [Effect of non-compliance]. However, if the appellant fails to comply with the pre-hearing disclosure in Rule 21, the Tribunal may allow the appeal to proceed to a hearing if it is satisfied that the other parties and interveners have sufficient information to prepare for the hearing (Rule 21(7)).

Documents

As noted above, Rule 21 requires parties to disclose all documents to be referred to, or relied upon, at the hearing with their Statement of Points. This will ensure that all parties will be prepared at the hearing. The types of documents that might be provided are: letters, memos, emails, notes to file, photographs, studies, reports, charts, articles, and any other materials that will be used to prove the party's case at the hearing.

If more than one document is provided, the documents must be organized by using an index and either numbering all documents consecutively, or by dividing the documents using tabs in accordance with Rule 21.

In addition, as noted above, one extra copy of the documents that will be referred to or relied upon at the hearing (excluding legal authorities and Statements of Points) must be brought to the hearing for the official recorder (Rule 21(6)).

The schedule for submitting documents with the Statement of Points does not preclude parties from the voluntary exchange of documents either before or after the 30- and 15-day deadlines. The Tribunal encourages parties to co-operate in the exchange of information as soon as possible in the appeal process to ensure that the matter proceeds in an informed and expeditious manner. If a party is not able to obtain the documents that it requires through a voluntary exchange, it may apply to the Tribunal for an order to produce documents or other things under [section 34\(3\)\(b\) of the Administrative](#)

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[Tribunals Act](#) and [Rule 18](#). See also “Obtaining documents before the hearing”, in [section 10.0 of this Manual](#).

Joint books of documents and legal authorities

Parties should refrain from photocopying a legal authority or document already provided to the Tribunal in the submissions of another party. Photocopying of legislation or policies should be limited to the sections which are considered pertinent and necessary to the Tribunal’s decision on the issues raised in the appeal. To reduce the unnecessary duplication of legal authorities and other documents, the Tribunal asks that parties consider providing joint books of documents and legal authorities to the Tribunal where possible.

Pre - hearing conferences

[Rule 15](#) [Pre-hearing conferences] states that the Tribunal may, on its own initiative, or at the request of a party or intervener, schedule a pre-hearing conference.

A pre-hearing conference is usually conducted by telephone, but may also be conducted in person in unusual circumstances. Attendance will generally be limited to one member of the Tribunal and one representative from each party and intervener to the appeal. Normally, the chair of the Tribunal oversees the pre-hearing conference. These conferences may be recorded by an official recorder.

Pre-hearing conferences provide the parties and interveners with an opportunity to clarify the hearing procedures, narrow the issues to be dealt with at the hearing, and discuss any preliminary concerns. They are intended to facilitate a just, expeditious and inexpensive disposition of the matter and the Tribunal may make any recommendation, direction or order to achieve this objective.

Some matters that may be addressed in a pre-hearing conference include:

- defining and simplifying the issues to be determined at the hearing;
- scheduling the date, time and place for the hearing of the appeal;
- identifying and scheduling witnesses;
- arranging for the exchange of documents and expert reports;
- admitting evidence relevant to the hearing and consented to by the parties;
- admitting facts relevant to the hearing and consented to by the parties;
- determining the day-to-day conduct of the hearing;
- hearing applications on preliminary or interim matters, including applications to extend a time limit, produce documents or postpone the hearing date; and

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- resolving the appeal (settlement discussions).

The Tribunal will normally schedule a pre-hearing conference in complex cases or in cases that involve numerous parties.

An application for a pre-hearing conference must be made in accordance with Rule 15; specifically, it must be in writing, provide the reasons for the pre-hearing conference, include possible dates for the conference as well as a list of the items to be discussed.

Pre-hearing conferences are of limited value unless all parties and interveners are fully prepared for a useful discussion of all items scheduled to be addressed, and are authorized to negotiate and make decisions with respect to those items. To be effective, the parties and interveners must be open to discussing all items on the agenda.

If a Tribunal member conducts a pre-hearing conference and settlement matters are discussed but the appeal is not resolved, that member will not sit on the panel that hears the merits of the appeal unless all parties provide their written consent.

These provisions do not preclude voluntary meetings between the parties. The parties are always free to discuss the case among themselves, and to try to resolve the appeal without the need for a hearing or decision by the Tribunal.

Failure to attend pre-hearing meetings or conferences

If notice of a pre-hearing conference has been properly given and a party fails to attend without advance written notice, the Tribunal may proceed in that party's absence ([Rule 15](#)).

Notification of expert evidence (Rule 27)

An expert witness is a person who, through experience, training and/or education, is qualified to give an opinion on a particular subject. To be an "expert" the person must have knowledge that goes beyond "common knowledge". (See also [section 12.2 of this Manual](#) for more information on expert evidence.)

If a party wants to submit an expert report at the hearing, and/or have an expert testify at the hearing without a report, the Tribunal requires the party to plan this well in advance of the hearing. The Tribunal requires parties to provide "notice" of expert evidence almost three months before the hearing is scheduled to start. However, [Rule 27\(12\)](#) also allows parties to agree to different dates provided that the new dates do not impact the scheduled commencement of the hearing.

The purpose of this notice is to give the other parties sufficient time to review and consider the opinions and facts upon which the opinion is based, to determine whether they need to retain their own expert to provide reply evidence, and to prepare questions to ask at the hearing. It may also facilitate settlement discussions.

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Under Rule 27, if a party intends to produce a written statement or report by an expert at a hearing, two copies of the statement or report must be provided to the Tribunal (unless additional copies are required by the Tribunal) and one copy to each of the parties and interveners before the statement or report is given in evidence. The expert report must be provided **84** calendar days before the commencement of the hearing (or **84** calendar days before the appellant's first written submission is due if the hearing is in writing). The expert's qualifications must be included with the report.

If a party intends to call an expert witness at a hearing without a report, the party is required to provide notice that an expert will be called to give an opinion. The party must provide two copies of the notice to the Tribunal (unless directed otherwise), and one copy to each of the parties and interveners, at least **84** calendar days in advance of the commencement of the hearing (or the appellant's first written submission is due in a written hearing). The notice must include:

- (a) the witness's qualifications and areas of expertise;
- (b) a written summary of the opinion to be given at the hearing; and
- (c) the facts on which the opinion is based.

If a party intends to produce evidence of an expert in reply, the notice of expert reply evidence and/or any reply report must be delivered at least **42** calendar days before the commencement of the hearing (or **42** calendar days before the appellant's first written submissions are due in a written hearing), in the same quantities identified above, unless the Tribunal directs otherwise. Notice of an expert reply must contain the information required above for the notice of an expert report or notice of expert testimony (without report), whichever applies.

Failure to provide reasonable notice of expert evidence or expert reports may result in a postponement/adjournment of the hearing or exclusion of the intended evidence.

Note: *One additional copy of any notices of expert evidence, expert reports and expert qualifications must be brought to the hearing for the official recorder (see Rule 27).*

Because the Tribunal has established its own rules for the introduction of expert evidence and the testimony of experts, [sections 10 and 11 of the Evidence Act](#) do not apply to expert evidence that is presented at hearings before the Tribunal. If there is a conflict between the Tribunal's rules and sections 10 or 11 of the *Evidence Act*, the Tribunal's Rules on expert evidence apply.

Arranging for witnesses to attend a hearing

Arranging for the attendance of witnesses at a hearing must be performed by the parties (and interveners, if authorized to call witnesses). It is up to the

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parties to ask a person or persons to voluntarily attend a hearing and to give evidence.

If a proposed witness refuses to attend a hearing voluntarily or refuses to testify, a party may apply to the Tribunal for an order requiring the person to attend the hearing and give evidence (a summons).

Application for an order requiring the attendance of a witness (summons)

The Tribunal's power to order the attendance of a witness is found in [section 34\(3\) of the Administrative Tribunals Act](#) which states that, at any time before or during a hearing, but before its decision, the Tribunal may order a person to attend a hearing to give evidence.

An application for an order requiring a person to attend a hearing to give evidence (a summons) must be made to the Tribunal in accordance with [Rule 18](#) [General application procedure] and [Rule 26](#) [Application for a summons (order to attend as a witness)].

Before applying for an order, the applicant must first ask the person to voluntarily attend as a witness. The request should be made in writing so the applicant can show that this step has been done. If the person refuses, an application may be made. Rule 26 requires the application to be made in writing, at least **60** calendar days before the hearing is scheduled to begin. The application must include the following information:

- (a) the name and address of the person wanted as a witness;
- (b) a brief summary of the evidence to be given by the person, and an explanation of why the evidence is relevant and necessary;
- (c) the attempts made to have the person voluntarily attend the hearing; and
- (d) if required, a list of the particular documents or other things the person must bring with them to the hearing.

It should be noted that Rule 26(7) requires the party who requested the order to pay any witness fees and expenses in accordance with [Schedule 3 of Appendix C of the BC Supreme Court Civil Rules](#), B.C. Reg. 168/2009, enacted under the *Court Rules Act*, unless certain exceptions apply or the Tribunal directs otherwise. Therefore, if the applicant wants the Tribunal to waive the requirement for payment of witness fees and expenses if an order is granted, the applicant should also make this request, with reasons, in the application.

When deciding whether to issue an order, the Tribunal will consider whether the party has requested voluntary attendance/compliance before making the request to the Tribunal, whether the information sought to be obtained through this person is relevant to the appeal, whether the person is reasonably likely to be able to supply the information, and any other factors that the Tribunal considers relevant.

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If the application is not made 60 calendar days before the hearing, the person applying for an order must include reasons for the delay. The Tribunal may waive this requirement.

If an order requiring the attendance of a witness is granted, the party who requested the order is responsible for serving it on the person (witness) by leaving it with that person, or by leaving it at the person's usual residence, within a reasonable time before the date the person is required to appear (Rule 26(6)). As proof of service may be required if the person does not appear at the hearing, the person who serves the Order should make a note of:

- the place, date and time of delivery;
- how the order was served (by giving it to the person or leaving it at their residence); and
- if the server gave the order to the person, how did the server know that it was the right person (for example, did the server know the person, or ask to see a driver's licence?).

Objecting to an order requiring attendance at a hearing (summons)

The person (witness) who is served with a summons ordered by the Tribunal may apply to the Tribunal for an order cancelling or varying the summons under Rule 26(8). The application may be made before or during the hearing and must set out the reason(s) the order should be cancelled or its terms should be varied, and must be sent to the person that requested the order.

The Tribunal may cancel or vary the order if it is satisfied that the evidence sought from the person is not relevant, may be obtained through some other means, is protected by privilege, the person is not able to provide the information sought, or the attendance of the person will be unduly inconvenient.

Failure to comply with an order for attendance at a hearing (summons)

According to [section 34\(4\) of the Administrative Tribunals Act](#), the Tribunal may apply to the Supreme Court for an order directing the person or any directors and officers of a person, to comply with the Tribunal's order.

Contempt

If a person ordered by the Tribunal to attend as a witness fails or refuses to attend a hearing, take an oath or affirmation, answer questions, or produce the records or things in their custody or possession, the Tribunal may apply to the court to have that person committed for contempt, as if in breach of an order or judgment of the court ([section 49\(1\) of the Administrative Tribunals Act](#)).

Security for costs

Under section [47.1 of the Administrative Tribunals Act](#) and section 1 of the *Security for Costs (Administrative Tribunals) Regulation*, the Tribunal has the

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authority to order an appellant or an intervener to deposit a sum of money that the Tribunal considers sufficient to cover all or part of the anticipated costs of the other parties and the anticipated actual costs and expenses of the Tribunal in connection with the appeal.

Section 2 of the *Security for Costs (Administrative Tribunals) Regulation* sets out the preconditions for making an order for security for costs. The Tribunal cannot make this order against an appellant or intervener unless it concludes that:

- (a) the appeal was initiated for improper purposes;
- (b) the intervener sought to participate in the appeal for an improper purpose;
- (c) there is no reasonable prospect that the appeal will succeed;
- (d) the appeal, or the person or body's participation in the appeal, is an abuse of process;
- (e) the appellant or the intervener fails to attend or be represented at a hearing without reasonable excuse; or
- (f) the appellant or intervener unreasonably delays the hearing of the appeal.

The Tribunal may make an order on its own initiative or upon the request of a party.

The Tribunal is not bound to order a security deposit when one of the above-mentioned examples occurs.

An application for security for costs must be made in accordance with [Rule 18](#) [General application procedure] and should include the suggested amount of the security deposit as well as identify which of the above preconditions is being relied upon for the order.

If the Tribunal grants an order for security for costs, the Tribunal may include directions respecting the disposal of the money deposited. Pursuant to section 3 of the *Security for Costs (Administrative Tribunals) Regulation*, the Tribunal may order that a deposit under section 47.1 of the *Administrative Tribunals Act* be paid in instalments.

If an order for deposit is made and the appeal proceeds to an oral hearing, the panel will give directions respecting the disposition of the money deposited at the completion of the appeal, or in its decision (see section 47.1(2) of the *Administrative Tribunals Act*). Submissions on the disposition of the money will be accepted in closing arguments in addition to any submissions regarding costs in general (see "Application for costs" in [section 13.0 of this Manual](#)).

Requesting a site visit

Prior to or during a hearing the Tribunal may, on its own initiative or at the request of a party, schedule a site visit. If a party wishes to schedule a site visit, a written request should be made to the Tribunal as early as possible in

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the process because additional time in the hearing schedule may be required to accommodate the visit. The request must comply with [Rule 18](#) [General application procedure], in that it must be in writing, explain the reasons for the site visit, and advise whether the other parties/interveners agree to a site visit.

If the site visit will be on private property, the party requesting the site visit must ensure that the property owner consents to the site visit.

The purpose of a site visit is to provide the panel with the opportunity to learn more about the appeal and better understand the evidence, not to gather evidence. The panel's observations during a site visit are not evidence. A site visit is not to be used as a fact-finding expedition. New evidence will normally not be accepted, unless in accordance with the rules of procedural fairness and in the presence of the official recorder. Examples of when a site visit would be appropriate include situations where the proximity of certain features on the site to each other, or to neighbouring properties, is an issue, or where an appreciation is needed of the size or scope of an undertaking or natural feature.

Prior to a site visit, the panel and parties will agree upon the date and time of the visit and how the visit will proceed. A site visit will not be conducted without all parties and interveners in attendance, unless that party or intervener has waived his or her right to attend.

Postponement of the hearing

All parties to an appeal are entitled to a hearing of the appeal in a timely fashion. Accordingly, the Tribunal will only grant a postponement of a hearing when all parties to the appeal consent to the postponement, or when the party requesting a postponement can show that special circumstances exist that justify postponing the hearing to a later date.

An application for a postponement must be made in accordance with [Rule 18](#) [General application procedure]; specifically, it must be in writing and explain the reasons for the postponement and whether the other parties and interveners agree to a postponement. In addition, the application should include the length of the proposed postponement (specify the next available date for a hearing).

When deciding whether to grant this request, the Tribunal will apply the general factors in [section 39 of the Administrative Tribunals Act](#) with respect to adjournments; that is, it will consider the reasons for the postponement, whether the postponement will cause unreasonable delay, the impact of both refusing and granting the postponement on the parties, and any impact on the public interest. In furtherance of, and/or in addition to, consideration of these general factors, the Tribunal will specifically consider the following:

- the proposed or anticipated length of the postponement;
- the adequacy of the reasons provided and the adequacy of any objections to the postponement;

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- the number, length and causes of any previous postponements that have been granted;
- whether the postponement will needlessly delay or impede the conduct of the hearing;
- whether the purpose for which the postponement is sought will contribute to the resolution of the matter;
- whether the postponement is required to provide a fair opportunity to be heard;
- the degree to which the need for the postponement arises out of the intentional actions or the neglect of the applicant for the postponement;
- the prejudice to the other parties if a postponement is granted, balanced against the prejudice to the applicant if the postponement is not granted;
- any environmental impacts that may result from a postponement of the hearing;
- any public interest factors, such as the public interest in the efficient and timely conduct of the appeal; and
- any other factors which may be relevant.

If a hearing is postponed, the Tribunal will consider whether to order any terms and conditions that may assist with the fair and efficient conduct of the appeal such as conditions respecting rescheduling, attendance at a pre-hearing conference, or production of documents or reports.

Before granting a postponement of a scheduled hearing, and except in extenuating circumstances, the Tribunal will give the other parties an opportunity to be heard. If the other parties to the appeal consent to the postponement, the request will rarely be denied.

12.2 Evidence

General

In an oral hearing, each party has the right to present evidence to support that party's case. "Evidence" is anything that has the potential of establishing or proving a fact. Evidence includes oral testimony, written records, demonstrations, physical objects, etc. It does not include argument or submissions made by a party for the purpose of persuading or convincing the Tribunal to decide the case in a particular way.

The only evidence the Tribunal will consider is the evidence that is provided to the Tribunal by the parties and interveners to the appeal. The Tribunal does not have the information that was considered by the Oil and Gas Commission when an appeal is filed: the Tribunal is not part of the Oil and Gas Commission and does not have access to the Commission's files. Therefore, a party or intervener must ensure that they submit all information to the Tribunal that

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will form part of their case, or make sure that one of the other parties or interveners does so.

In some circumstances, the *Evidence Act* may apply to oral and written evidence that is presented at hearings before the Tribunal. Parties should consult that Act to determine whether it may apply. However, as noted above, [sections 10 and 11 of the Evidence Act](#) do not apply to expert evidence that is presented at hearings before the Tribunal (see “Notification of expert evidence”, above).

While most of the information under this heading relates primarily to oral hearings, the principles involved in weighing evidence and applying the correct burden of proof are common to all types of hearings.

Admissibility and exclusion of evidence

The rules of evidence that apply to a hearing before the Tribunal are less formal than the rules applied by the courts. [Section 40 of the Administrative Tribunals Act](#) states that the Tribunal “may receive and accept information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.” The Tribunal may admit hearsay and circumstantial evidence if it is considered relevant.

Relevance is the primary consideration for the Tribunal when deciding whether to admit evidence. Relevant evidence can be described as evidence (oral or written) that will shed some light on a disputed matter or tends to prove or disprove a fact in issue.

The Tribunal may also exclude evidence. Section 40(2) of the *Administrative Tribunals Act* allows the Tribunal to exclude anything unduly repetitious. In addition, in accordance with general legal principles, the Tribunal may exclude evidence if it is of minimal relevance, is unreliable, may confuse the issues, or may prejudice the other parties. The Tribunal may be obligated to exclude evidence that is privileged or is restricted by a statute such as the *Evidence Act*.

Before any evidence is excluded by the Tribunal, parties will be offered an opportunity to explain why the evidence they are seeking to introduce is relevant and should not be excluded. If evidence is limited or excluded, the Tribunal will advise the parties of its reasons for doing so.

All evidence admitted during the hearing will be assessed by the Tribunal to determine what weight, if any, should be given to the evidence. Generally speaking, evidence that is not sufficiently reliable for the Tribunal’s purposes will be given less weight when the Tribunal is making its decision on the merits of the appeal.

New evidence: evidence not before the Oil and Gas Commission

To ensure that the Tribunal has the best evidence before it, including the most up to date information, the Tribunal normally holds a “new hearing”. This means that the Tribunal will allow evidence to be presented in a hearing that

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was not before the Oil and Gas Commission, subject to the considerations mentioned in the previous section ("Admissibility and exclusion of evidence").

However, if a party or intervener provides new evidence at a hearing that was not disclosed prior to the hearing, the evidence "surprises" a party or intervener that is adverse in interest, or there is insufficient time for the other party to adequately consider the evidence, the Tribunal may grant a recess (a break) to allow the other party to consider the evidence. Alternatively, the Tribunal may adjourn the hearing to another date.

Agreed statement of facts

If the parties to an appeal agree that certain facts are true, or that certain events relevant to the appeal happened in a certain way, the parties may submit an "agreed statement of facts" to the Tribunal.

An agreed statement of facts can reduce the overall length of the hearing by avoiding the need for the parties to call witnesses or produce evidence at the hearing to prove those facts or events. If an agreed statement of facts is submitted, it will be determinative of those facts for the purposes of the appeal.

Evidence provided by affidavit, telephone or videoconferencing

If a witness is unable to attend an oral hearing in person, the Tribunal may allow the witness to testify by telephone, videoconferencing, or provide their evidence in a sworn written statement (i.e., affidavit). However, if a party seeks to have the witness give evidence by telephone or videoconferencing, that party must determine whether such options are available at the hearing venue before making the application to the Tribunal, and must specify the time and date that the witness will be available to testify by telephone or videoconference.

When considering a request to allow evidence to be given in one of these, the Tribunal will consider any objections from the parties. If the request is for testimony by affidavit, the Tribunal will also consider any request for cross-examination of the affiant on the contents of the affidavit under [Rule 21](#).

If the Tribunal allows a witness to testify by telephone or videoconferencing, it is up to the requesting party to make all necessary arrangements, and any associated cost must be paid by that party. Further, any documents that the witness will be referring to must be provided to the Tribunal and the other parties in advance.

In some cases, the Tribunal may give less weight to evidence provided by telephone or affidavit, compared to evidence given in person or by videoconference, because it is more difficult to assess a witness's credibility.

Expert evidence

An expert witness is a person who, through experience, training and/or education, is qualified to give an opinion on certain aspects of the subject matter of the appeal. To be an "expert" the person must have knowledge that goes beyond "common knowledge".

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As stated previously in this section, [sections 10 and 11 of the Evidence Act](#) do not apply to expert evidence that is presented at hearings before the Tribunal, because the Tribunal has established its own rules for the introduction of expert evidence and the testimony of experts. In addition, if there is a conflict between the Tribunal's rules and sections 10 or 11 of the *Evidence Act*, the Tribunal's rules on expert evidence apply.

Experts must be "qualified" by the Tribunal before giving their opinion. Each party will have an opportunity to cross-examine a proposed expert and make submissions on the expert's qualifications. To be "qualified" to give expert opinion evidence on a particular subject matter(s), the Tribunal must be satisfied that the witness has the appropriate experience and training to be an expert in the matters for which he or she is giving expert opinion evidence.

If a person is not qualified to give expert evidence on a particular subject matter, the Tribunal may still receive the witness's evidence. The Tribunal will determine what weight should be given to each witness's testimony. The qualifications and experience of the witness will be a factor in determining the weight to be given to that witness's testimony.

Witness panels

The Tribunal may permit evidence to be given by a number of witnesses sitting as a witness panel. This will normally be allowed when the testimony of two or more witnesses is interconnected, and the evidence will be more understandable if the witnesses are able to give their evidence in a chronological fashion. Cross-examination will not take place until all of the witnesses on the panel have presented their initial evidence (i.e., evidence-in-chief/direct evidence).

The main restriction on this type of format is that the witnesses cannot discuss the answers to questions with the other witnesses on the panel. Each witness must give his or her evidence without consultation with the other panel witnesses.

12.3 The Hearing

Role of the panel chair

The member of a panel who has been designated as chair of that panel will be responsible for the general conduct of the appeal hearing.

Official hearing recorder

All Tribunal hearings are recorded by an official verbatim recorder ([section 35 of the Administrative Tribunals Act](#)). The recording of Tribunal proceedings by anyone other than the Tribunal's official recorder is not permitted unless approved by the Tribunal (see also [Rule 21\(10\) and \(11\)](#)).

Section 35 of the *Administrative Tribunals Act* states that the recording is presumed to be correct and constitutes part of the record. If the recording is defective, it does not affect the validity of the proceeding.

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Powers of the panel at the hearing

The panel will determine how the hearing is conducted and may, among other things:

- determine the order and the hours of proceeding;
- receive and accept on oath or affirmation, by affidavit or otherwise, evidence and information that the panel considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law, or exclude or limit evidence and information;
- require the production of evidence;
- require the attendance of witnesses;
- allow oral evidence and/or argument by telephone or videoconference in special circumstances;
- order the exclusion of witnesses from the hearing prior to giving evidence;
- ask questions of participants or witnesses;
- place time limits on the examination or cross-examination of witnesses, or on opening or closing arguments;
- adjourn a hearing; and/or
- make any other decision or order necessary for the just, timely and full resolution of the appeal.

The panel may make any orders or give directions that the panel considers necessary for the maintenance of order at the hearing, including:

- imposing restrictions on a person's continued participation in, or attendance at, a proceeding; and
- excluding a person from further participation in, or attendance at, a proceeding until the panel orders otherwise.

Additional information on some of these subjects is set out under different headings below.

Restriction of public access to oral hearings and documents

Under [section 41 of the *Administrative Tribunals Act*](#), an oral hearing of an appeal will be open to the public unless the panel directs that all or part of the information be received to the exclusion of the public because, in the opinion of the panel:

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

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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.

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

- the panel is of the opinion that (a), above, applies; or
- the panel directs that all or part of the document be received in confidence to the exclusion of a participant or participants because, in the opinion of the panel, its nature requires that direction to ensure the proper administration of justice.

Exclusion of witnesses

Prior to giving his or her evidence, the panel may ask a witness (or witnesses) to wait outside of the hearing room until the witness is called upon to testify. This may be done on the panel's initiative or at the request of a party.

Swearing-in of witnesses

According to [Rule 25](#) [Oath or affirmation], before a person testifies at an oral hearing (including a party), the person will be asked to swear an oath or make a solemn affirmation that the evidence given will be true. An oath is sworn on a bible. An affirmation is a solemn statement that may be expressed as follows: "I solemnly affirm to tell the truth, the whole truth and nothing but the truth."

When a spokesperson or representative will be giving evidence, he or she will also be asked to swear an oath or make a solemn affirmation before giving evidence. It is not necessary to be sworn in to examine or cross-examine a witness.

The official recorder normally administers the oath or affirmation. To avoid delays when the witness is on the stand, parties should ask each of their witnesses, in advance of the hearing, whether the witness wants to give their evidence under oath or affirmation. The parties should also give advance notice to the official recorder of the witness's choice (oath or affirmation).

Evidence in Confidence

Under [section 42 of the Administrative Tribunals Act](#), the panel may direct that all or part of the evidence of a witness, or documentary evidence, be received in confidence to the exclusion of a party(s) or intervener(s) on terms that the panel considers necessary. This order will only be made if the panel is of the opinion that it is required to ensure the proper administration of justice.

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Procedure at the hearing

While Tribunal hearings are not as formal as court proceedings, they are still reasonably formal and parties are expected to act appropriately. The chair of the panel is addressed as "Mister Chair" or "Madam Chair". Surnames should be used when addressing or referring to the other panel members or parties. The degree of formality of a hearing may vary depending on the composition of the panel hearing the appeal, the nature of the parties, and the subject matter of the appeal. The following format will generally be followed:

1. The chair of the panel will begin the hearing by identifying the panel members conducting the appeal and the official recorder appointed to record the proceedings.
2. The chair will state the statutory authority for the Tribunal to hear the appeal and identify the decision that is being appealed. The chair may also clarify with the parties the precise issue(s) to be decided in the appeal.
3. The chair will invite those parties in attendance to introduce themselves for the record.
4. The chair will review the procedures that will apply at the hearing in connection with the presentation of evidence. Where there are multiple appellants, respondents and/or third parties, or the presence of an intervener(s), the order for presenting their respective cases will also be addressed. The chair may make a statement regarding the scope of evidence that will be acceptable and other limitations as may be applicable.
5. The parties will be given an opportunity to confirm or to clarify their understanding of the matter at hand and to make any preliminary objections or requests.
6. Opening Statements: The chair will then ask the parties for their opening statements, usually in the following order:
 - (1) appellant
 - (2) respondent
 - (3) third party (if any)
 - (4) intervener (if any)

The appellant's opening statement is to include the grounds for appeal, the remedy (decision) sought at the end of the appeal, the number and names of witnesses (if any) to be called, and the approximate time required to put the appellant's case before the panel. The respondent's and third party's opening statements should include the respective remedies (decisions) they seek from the Tribunal, the number and names of witnesses (if any) to be called, and the approximate time required to put their respective cases before the panel. An intervener's opening statement is to include a

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summary of the position that it will be presenting on the appeal in accordance with any prior limitations or conditions set by the Tribunal.

7. Witnesses/Evidence (see also [sections 38 and 40 of the Administrative Tribunals Act](#)): The chair will advise the appellant to call its first witness (this may be the appellant him or herself, or a representative of the corporation, society or other legal person who may be the appellant). The appellant will ask the witness questions first. When the appellant is finished with its questions, the witness may be cross-examined by the respondent and the third party (if present). Members of the panel may also ask the witness questions. New information given in response to questions asked by the other parties or the panel is subject to re-examination by the appellant. The same procedure applies for each subsequent witness.
8. When the appellant has finished calling its witnesses, the chair will advise the respondent to proceed with the presentation of its evidence (call its witnesses to testify). The respondent will ask its witness questions first, and then the witness may be cross-examined by the appellant and the third party (if present). Members of the panel may also ask the witness questions. New information given in response to questions asked by other parties or the panel is subject to re-examination by the respondent. The same procedure applies for each subsequent witness.
9. When the respondent has finished calling its witnesses, the third parties (if any) will present their evidence in the order determined by the chair. Each witness will give his or her evidence, and will then be subject to cross-examination by the appellant and the respondent. Members of the panel may also ask the witness questions. New information given in response to questions asked by other parties or the panel is subject to re-examination by the third party that called the witness. The same procedure applies for each subsequent witness.
10. Any interveners will be given the opportunity to present evidence if, or to the extent, initially authorized by the Tribunal. This evidence may be subject to cross-examination by the parties and to questions from the panel.
11. The appellant may apply to the panel for the opportunity to call "reply evidence" (e.g., a witness to respond to evidence tendered by the other parties). The application may only be granted if the respondent or third party called evidence that could not reasonably have been anticipated by the appellant.
12. Closing Statements: When the parties are finished calling their witnesses and providing their documents (presenting their evidence), the chair will ask the parties to present a closing statement (argument). In some circumstances the panel chair will allow, or

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request that, the parties make their closing submissions to the Tribunal in writing.

In their closing statements, the parties should focus on those facts and/or principles of law that they would like the panel to consider, and reiterate the remedy that they are seeking from the Tribunal. The parties may also wish to suggest alternatives for the panel to consider when making its decision, provided that the evidence presented during the hearing supports the proposed alternatives. The order of presentation is normally as follows:

- (1) appellant
- (2) respondent
- (3) third party (if any)
- (4) intervener (if any)
- (5) reply by appellant

****No new evidence will be accepted in the closing statement.**

12. The chair will advise parties to the appeal that the hearing of evidence is concluded and the "record is closed" (see below).

Objections

If a party wishes to object to something during the hearing, that party may raise an objection. For instance, a party may object to questions or evidence on the grounds that it is not relevant to an issue in the appeal.

To object, a party should stand and state the reasons for the objection in a courteous manner. The panel will provide the other party(s) with an opportunity to respond before making a decision on the objection.

Maintenance of order at hearings

[Section 48 of the Administrative Tribunal Act](#) gives the panel the power to make orders or give directions that it considers necessary for the maintenance of order at the hearing. For instance, it may impose restrictions on a person's continued participation in, or attendance at, a hearing, or it may exclude a person from further participation in an appeal, or attendance at the hearing, until the panel orders otherwise.

Contempt

Under section 48 of the *Administrative Tribunals Act*, if the person who is subject to the order or direction disobeys, refuses, or fails to comply with the order or direction, the panel may ask a peace officer to enforce the order or direction, or it may apply to the court to commit the person for contempt of the order or direction under [section 49\(2\) of the Administrative Tribunals Act](#).

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Documents not provided during pre-hearing disclosure

The pre-hearing disclosure rules were created to ensure that the Tribunal, the parties, and the interveners are able to prepare for the hearing. Avoiding “surprises” will ensure an efficient hearing process. However, there are occasions when new documents come to light that are relevant to the issues under appeal.

In accordance with [Rule 21\(8\) and \(9\)](#), if a party or intervener seeks to refer to, or rely upon, a document that was not disclosed prior to the hearing, that party or intervener must obtain the approval of the panel. The party or intervener must bring sufficient copies of the document to the hearing for each member of the panel, each party and intervener, the official recorder, and a copy for the Tribunal’s file (usually 7 – 8 copies). If the new material is legislation, case law, legal articles or excerpts from text books, the official recorder does not require a copy.

If sufficient copies are not brought to the hearing, it is the responsibility of the party submitting the documents to arrange for, and pay for, copies to be made during the hearing.

The panel may ask the other parties and interveners whether they have any objections to the document. Among other things, when deciding whether to accept the new document, the panel will consider whether the document is relevant to an issue in the appeal and whether the other parties will require additional time to review the document.

Documents entered into evidence at the hearing will be marked as an exhibit to the hearing.

Failure to identify witnesses prior to the hearing

If a party or intervener wants to call a person to testify at the hearing that was not identified during the pre-hearing disclosure process, the person may not be able to give evidence without the panel’s approval. The panel may ask the other parties and interveners whether they have any objections to the proposed witness. Among other things, when deciding whether to allow the new witness to testify, the panel will consider whether the person’s evidence is relevant to an issue in the appeal, whether the addition of the witness will delay the proceedings, and whether the other parties and interveners may require an opportunity to present new witnesses in reply.

The panel may make any decision or order that it considers appropriate in the circumstances, including:

- adjourning the hearing; and
- ordering a party to pay the costs incurred by any other parties as a result of the adjournment.

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Legal authorities not provided prior to the hearing

A party wanting to rely on a legal authority not previously provided during pre-hearing disclosure, must provide a copy for each panel member, all of the other parties and interveners, and the Tribunal's file.

Adjournments

An adjournment is a discontinuation of a hearing which is in progress. The panel will make every effort to complete a hearing within the time scheduled. However, the panel has the authority under [section 39 of the Administrative Tribunals Act](#) to adjourn a proceeding if an adjournment is required "to permit an adequate hearing to be held."

The panel will adjourn a hearing to a later date if: the hearing is not concluded within the allotted time, a party is "surprised" by previously undisclosed evidence, or another problem arises that is of sufficient importance to warrant the delay that will occur if the adjournment is granted.

If a party requests an adjournment, the panel is required under [section 39\(2\) of the Administrative Tribunals Act](#) to have regard to the reasons for the adjournment, whether the adjournment would cause unreasonable delay, the impact of both refusing and granting the adjournment on the parties, and any impact on the public interest. In furtherance of, and/or in addition to, consideration of the general factors, the panel will specifically consider the following:

- the views of the other parties;
- the proposed or anticipated length of the adjournment;
- the adequacy of the reasons provided for the adjournment and the adequacy of any objections to the adjournment;
- the number, length and cause of any previous adjournments or postponements that have been granted;
- whether the adjournment will needlessly delay or impede the conduct of the hearing;
- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
- whether the adjournment is required to provide a fair opportunity to be heard;
- the degree to which the need for the adjournment arises out of the intentional actions or the neglect of the applicant;
- any prejudice to the other parties if an adjournment is granted, balanced against the prejudice to the applicant if the adjournment is not granted;
- any environmental impacts that may result from an adjournment of the hearing;

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- any public interest factors, such as the public interest in the efficient and timely conduct of the appeal; and
- any other factors which may be relevant.

Before granting an adjournment, and except in extenuating circumstances, the panel will give the other parties an opportunity to be heard. If the other parties to the appeal consent to the adjournment, the request will rarely be denied.

If a hearing is adjourned, the panel will consider whether to order any terms and conditions that may assist with the fair and efficient conduct of the appeal.

Closing of the record

[Rule 24](#) [Closing of the record] states that, at the conclusion of the hearing, the record will be closed unless the panel directs otherwise. Once the record is closed, no additional evidence will be accepted.

Reopening a hearing on the basis of new evidence

Pursuant to [Rule 24](#) [Closing of the record], once the record is closed, no additional evidence will be accepted from the parties unless the Tribunal's decision has not been released and the panel decides that: the evidence is material to the issues, there are good reasons for the failure to produce it in a timely fashion, and acceptance of such evidence is in accordance with the principles of natural justice and procedural fairness.

Additional information requested by the Tribunal

After the oral hearing is completed, the panel may find that further information is required from one or more of the parties in order to make a decision on the appeal. If the panel requests additional information from one or more of the parties, all parties will be given access to or copies of the information, and will have an opportunity to make submissions and respond to the information.

Role of precedent (previous decisions of the Tribunal)

Although the Tribunal may be bound by the decisions of certain courts, it is not required to follow (i.e., is not bound by) its past decisions or the decisions of other administrative agencies. While prior decisions of the Tribunal may indicate how panel members will view particular types of cases, as a matter of law, the panel must decide each case on its own merits.

Burden of proof

The general rule is that the burden or responsibility for proving a fact is on the person who asserts it. The fact is to be proved on a "balance of probabilities".

Photographing and recording during a hearing [as amended 04/19]

According to [Rule 21\(10\)](#), photographing, audio recording, video recording or other electronic recording of Tribunal proceedings is prohibited without the

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prior approval of the Tribunal or the panel. If approved, the Tribunal or the panel may impose terms and conditions on the activity.

If permission will be sought from the hearing panel, the panel should be advised of the application before the hearing opens for the day. This gives the panel time to determine the process that it will follow to decide the application.

Failure to attend an oral hearing

In accordance with [Rule 20](#) [Failure to participate in a hearing], if the **appellant** has been given timely notice of the hearing and fails to attend, the panel may proceed with the hearing, dismiss the appeal as abandoned, or make any order appropriate in the circumstances.

If the **respondent, third party or an intervener** has been given timely notice of the hearing and, without advance written notice and reasonable explanation, fails to attend, the panel may proceed with the hearing and make a decision without further notice to that party or intervener.

13.0 APPLICATION FOR COSTS

[Section 47 of the Administrative Tribunals Act](#) provides the Tribunal with the power to order costs in respect of an appeal.

Party-and-Party Costs

Under sections 47(1)(a) and (b) of the *Administrative Tribunals Act*, the Tribunal may order a party or an intervener to pay all or part of the costs of another party or intervener in connection with the appeal. An order for costs cannot be made against an agent or representative of government ([section 47.2 of the Administrative Tribunals Act](#)), it may only be made against "the government".

An application for costs may be made at any time during the appeal. However, if the appeal proceeds to a hearing on the merits, the party applying for costs should reapply for an award of costs at the hearing, at which time the panel will normally take submissions on the application.

The panel will not make an order for costs unless a party/intervener requests that it be awarded costs. However, the panel may, on its own initiative, ask a party/intervener whether it seeks costs.

The Tribunal has not adopted a policy that follows the civil court practice of "loser pays the winner's costs." The objectives of the Tribunal's costs policy are to encourage responsible conduct throughout the appeal process and to discourage unreasonable and/or abusive conduct. Thus, the Tribunal's policy is to award costs in special circumstances. Those circumstances include:

- (a) where, having regard to all of the circumstances, an appeal is brought for improper reasons or is frivolous or vexatious in nature;

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- (b) where the action of a party/intervener, or the failure of a party/intervener to act in a timely manner, results in prejudice to any of the other parties/interveners;
- (c) where a party/intervener, without prior notice to the Tribunal, fails to attend a hearing or to send a representative to a hearing when properly served with a “notice of hearing”;
- (d) where a party/intervener unreasonably delays the proceeding;
- (e) where a party’s/intervener’s failure to comply with an order or direction of the Tribunal, or a panel, has resulted in prejudice to another party/intervener; and
- (f) where a party/intervener has continued to deal with issues which the Tribunal has advised are irrelevant.

The panel is not bound to order costs when one of the above-mentioned examples occurs, nor does it have to find that one of the examples must have occurred to order costs.

The panel will not order a party/intervener to pay costs unless it has first given that party/intervener an opportunity to make submissions on the application. If the Tribunal orders that all or part of a party’s/intervener’s costs be paid, it may ask for submissions with respect to the amount of costs incurred.

The costs payable to a party under section 47(1)(a) or (b) of the *Administrative Tribunals Act* will be determined on the basis of [Appendix B of the BC Supreme Court Civil Rules](#), B.C. Reg. 168/2009, enacted under the *Court Rules Act*. Appendix B lists items for which costs can be awarded, as well as the corresponding number of units for each item. The panel will decide the scale under which costs are to be assessed. The scale chosen depends on the difficulty of the matter being appealed and provides increasing dollar values for matters of greater difficulty.

If the panel orders costs, the order may be filed in a court registry at which time it will have the same effect as an order of the court for the recovery of a debt in the amount stated. All proceedings may be taken as if the order were an order of the court (section 47(2) of the *Administrative Tribunals Act*).

The Tribunal’s Costs and Expenses

If the panel considers that the conduct of a party has been improper, frivolous, vexatious or abusive, it may order that party to pay all or part of the “actual costs” and expenses of the Tribunal in connection with the appeal (section 47(1)(c) of the *Administrative Tribunals Act*). Decisions of the courts defining conduct that is improper, frivolous, vexatious or abusive may be used to assist the panel in determining whether to apply this section.

Expenses of the Tribunal that a party may be required to pay:

- a) recorder fees;

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- b) per diems of panel members;
- c) travel expenses;
- d) hotel costs; and
- e) charges for the hearing room.

These expenses will vary based on such factors as the nature and location of the appeal, the number of days of the hearing, and the number of panel members sitting on the appeal.

The panel will not order a party to pay the Tribunal's actual costs or expenses unless it has first given that party an opportunity to make submissions on this issue.

14.0 DECISIONS

Powers of the Tribunal when making final decisions

The Tribunal has broad decision-making powers. In general, the Tribunal may:

- (a) confirm, vary or rescind the decision appealed from, or
- (b) send the matter back, with directions, to the person whose decision is under appeal.

[For other powers, see also [section 2.0 of this Manual](#) under the heading "The Tribunal's powers and order-making authority".]

How final decisions are made

Only those Tribunal members who sat on the panel that heard the appeal will make the decision.

When making the decision, the panel members are required to determine, on a balance of probabilities, what occurred and decide the issues raised in the appeal. They will evaluate the evidence presented and apply the relevant legislation and legal authority. As a general rule, the panel is not bound by government policy.

The decision of the majority of the members of a panel is the decision of the Tribunal. In the case of a tie, the decision of the chair of the panel governs ([section 26\(6\) of the Administrative Tribunals Act](#)).

Written reasons

The Tribunal will give written reasons for all of its final decisions ([section 51 of the Administrative Tribunals Act](#)). It also gives written reasons for most preliminary applications and orders.

The Tribunal will provide a copy of its final decision to all of the parties and interveners in accordance with the usual method of delivery to that party or

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intervener, and a hard copy of the decision will be sent by mail. The decision will also be sent to the responsible minister's office.

Most preliminary decisions and all final decisions are posted on the Tribunal's website, and some will be summarized and included in the Tribunal's annual report.

[Section 52 of the Administrative Tribunals Act](#) provides the Tribunal with authority to give notice of its decision to the parties by alternative methods in certain circumstances.

When will a final decision on the appeal be made?

The time required to issue a decision will vary depending on the nature of the appeal, the length of the hearing, and the complexity of the issues involved.

The panel presiding over an appeal will endeavour to provide the parties with its final decision and written reasons as soon as practicable after the completion of the hearing. Final written decisions with reasons will generally be released within the timelines set out in [Practice Directive No. 1](#) issued by the Tribunal.

On rare occasions, an oral decision may be rendered at the conclusion of an oral hearing. If this occurs, the panel will provide its written reasons within the timelines set out in Practice Directive No. 1.

Effective date of decisions and orders

Pursuant to section [50\(3\) of the Administrative Tribunals Act](#), a decision or order is effective on the date on which it is issued, unless otherwise specified by the Tribunal.

Amendments to final decisions

[Section 53 of the Administrative Tribunals Act](#) provides that the panel may amend a final decision within 30 calendar days of all parties being served with the final decision. An amendment may be made on application by a party, or on the panel's own initiative, to correct:

- (a) a clerical or typographical error;
- (b) an accidental or inadvertent error, omission or other similar mistake; or
- (c) an arithmetical error made in a computation.

A party may also apply for clarification of the final decision under section 53 within 30 days of being served with the decision.

Enforcement of final decisions

Pursuant to [section 54 of the Administrative Tribunals Act](#), once a certified copy of the Tribunal's final decision is filed with the BC Supreme Court, the decision

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will have the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court.

Where past Tribunal decisions may be found

Copies of past Tribunal decisions are available upon request from the Tribunal office and from the following libraries:

- Legislative Library
- University of British Columbia Law Library
- University of Victoria Law Library
- West Coast Environmental Law Library

Decisions are also located on the Tribunal's website (<https://www.bcerat.ca/decisions/>), and are available on the LexisNexis® Quicklaw® database (<http://www.lexisnexis.ca/en-ca/home.page>), to subscribers of that service.

Review of Tribunal decisions

There is no right of appeal to the courts from a Tribunal decision. If a party is dissatisfied with a decision or order of the Tribunal may apply to the B.C. Supreme Court for a judicial review of the decision pursuant to the [Judicial Review Procedure Act](#). A judicial review of a final decision of the Tribunal must be commenced within **60** days of the date that the Tribunal's decision was issued, unless the court extends the time ([section 57 of the Administrative Tribunals Act](#)).

15.0 WITHDRAWING OR ABANDONING AN APPEAL

An appellant may withdraw all or part of the appeal by informing the Tribunal in writing, or by informing the panel in person (on the record) during the course of a hearing. According to [section 17\(1\) of the Administrative Tribunals Act](#), once the appellant advises the Tribunal that all or part of the appeal is withdrawn, the Tribunal must accept it and order that all or part of the appeal is, accordingly, dismissed.

16.0 ADDITIONAL PROVISIONS

Calculating time limits and deadlines

[Section 25 of the Interpretation Act](#) applies to all time limits set out in statutes, such as the time limits for filing a notice of appeal.

[Rule 4](#) [Calculating time] explains how the Tribunal calculates time under the Rules, any order or direction of the Tribunal, as well as any time lines set out in this Manual.

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When something must be done or provided within a certain number of days, “days” are counted as calendar days, which is defined in [Rule 1](#) [Definitions] as each day shown on a calendar and includes weekends and holidays. There are two types of calculations that may be required to determine a due date: calculating due dates going forward, and calculating due dates going backwards. For example, if a person is given 10 days to provide something to the Tribunal (counting forward in time), the days are calendar days, and are to be counted by excluding the first day and including the last day. The last day will be the “due date”. If it is the first days of the month, the item would be required on the 11th. However, if the 11th is a Saturday, Sunday or public holiday, the due date will be the next calendar day that is not a Saturday, Sunday or public holiday. Using the current example, the due date would be on the Monday or, if the Monday is a public holiday, then the due date would be Tuesday.

If the calculation requires time to be calculated backwards (e.g., 30 calendar days before the first day of hearing), the calendar days are counted by excluding the first day of the hearing and including the last day (i.e., the last day is the due date). For example, if the first day of a hearing is on July 31st, 30 calendar days before that day is July 1st. The item would be due on July 1st. However, if the due date falls on a Saturday, Sunday or public holiday, the due date will be the calendar day that falls before the Saturday, Sunday or public holiday (e.g., the Friday before the weekend). Using the current example, the due date would fall in June (June 30th or earlier).

If a party or intervener is unable to meet a time limit in the Rules, or a deadline that has been set out in an order or direction of the Tribunal, the party or intervener must apply for a change to the time limit. Under Rule 4, the Tribunal may modify a time limit if the Tribunal determines that it is fair and appropriate in the circumstances, regardless of whether the time limit has already expired.

It should also be noted that, to be on time, the document (including submissions) must be delivered or filed with the Tribunal within the “business day”, which is defined in Rule 1 [Definitions] as 8:30 am to 4:30 pm, Monday through Friday, excluding public holidays. If it is not delivered within that time frame (e.g., it is delivered at 5:30 pm), the document is deemed to be delivered on the next business day (see [Rule 12](#)).

Non-compliance with the Rules or a Tribunal order

Pursuant to [section 18 of the Administrative Tribunals Act](#) and [Rule 3](#) [Effect of non-compliance], if a party fails to comply with a Rule or an order of the Tribunal, the Tribunal must give the party notice of the non-compliance, and then may do one or more of the following:

- (a) schedule a hearing;

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- (b) continue with the appeal and make a decision based upon the information before it, with or without providing an opportunity to make submissions;
- (c) dismiss the appeal;
- (d) make an order for costs; and/or
- (e) make any other decision or order that the Tribunal considers appropriate in the circumstances.

However, Rule 3 also clarifies that technical defects and irregularities in form will not invalidate the proceedings or constitute non-compliance with the Rules.

When deciding the outcome of a party or participant's non-compliance, the Tribunal will consider the severity of the non-compliance, whether there is a history of non-compliance, and the prejudice to the other parties and participants of the non-compliance. The Tribunal will not dismiss an appeal unless the non-compliance is the appellant's, is highly prejudicial to the other parties, and it cannot be remedied by an order for costs or by an alternate remedy. Dismissing an appeal due to non-compliance will only occur in the rarest of cases.

If the non-compliance relates to a deadline in the Rules, or in an order or direction of the Tribunal, the Tribunal may modify the deadline whether or not it has already passed. Before doing so, the Tribunal must be satisfied that it is fair and appropriate to do so in the circumstances ([Rule 4](#)).

Audio or visual requirements in the hearing room

If a party wants to use an overhead projector, flip chart, VCR, telephone conferencing, videoconferencing, etc., at a hearing, that party must confirm the availability of such items with the venue scheduled for the hearing (e.g., hotel, Tribunal office) and make arrangements accordingly. The cost of such equipment or services must be paid by that party.

Interpreters and other accommodations

The Tribunal will make every effort to accommodate the parties' and interveners' reasonable needs to enable their meaningful participation at a hearing. If a party, intervener, representative, or a witness requires an interpreter and/or any other accommodation (e.g., services to assist the visually or hearing impaired), the Tribunal will, at the request of the party or intervener, or on its own initiative, accommodate the intervener's needs as is reasonable in the circumstances.

If a party or intervener requires some type of accommodation or assistance, he or she must notify the Tribunal **at least 30 calendar days** before the hearing commences ([Rule 23](#)).

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Transcripts

A person may request a transcript of any proceedings before the Tribunal from the official recorder. The cost of a transcript must be paid by the person who makes the request.

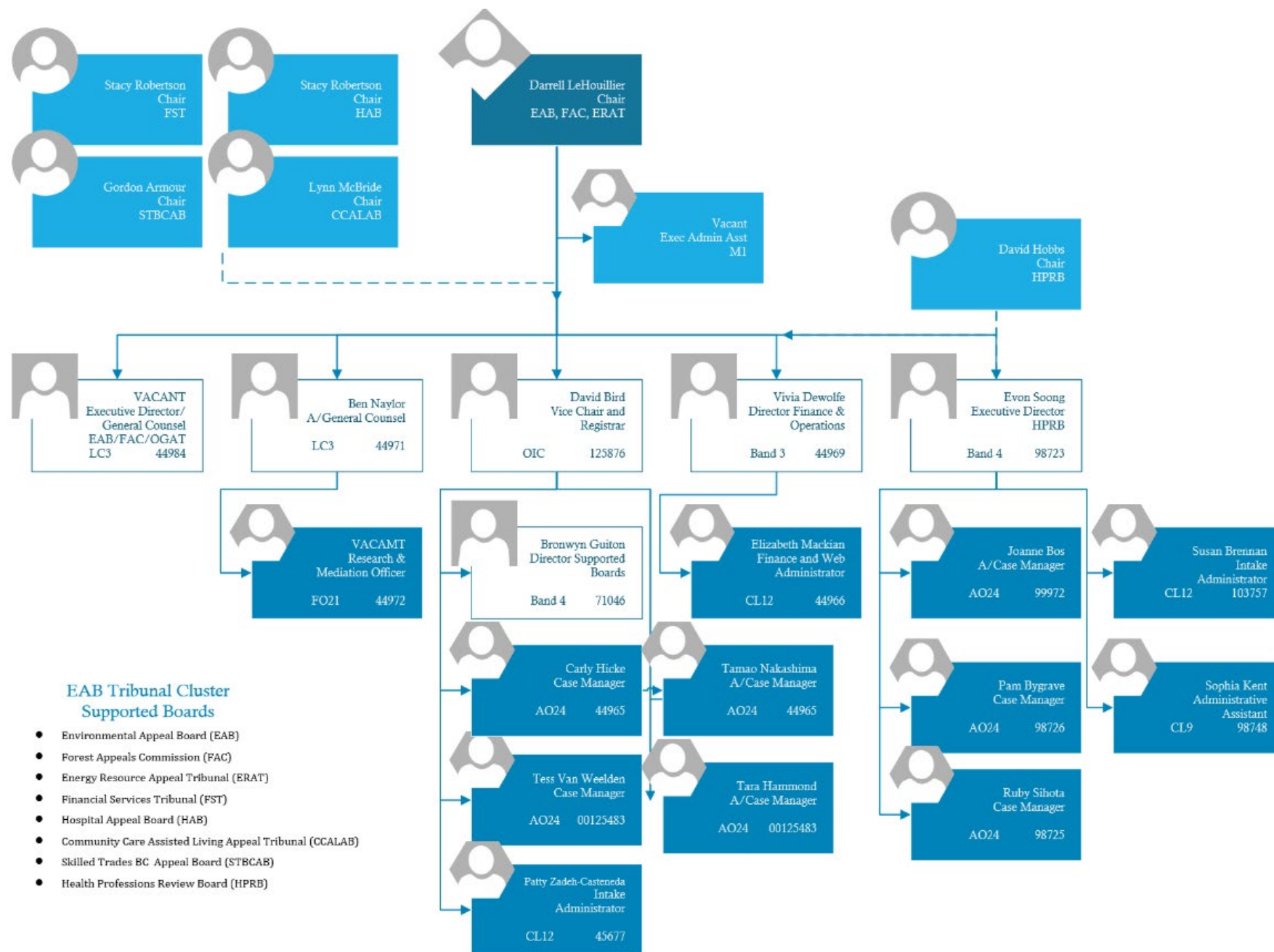
Pursuant to [section 35 of the *Administrative Tribunals Act*](#), if a transcript is unable to be produced due to a mechanical or human failure or other accident, the validity of the proceeding is not affected.

Legal counsel to the Tribunal

The Tribunal may appoint and direct its legal counsel to:

- (a) advise the Tribunal on matters of law and procedure and on such other matters as the Tribunal requests;
- (b) ask questions of the witnesses retained by the Tribunal; and
- (c) question witnesses.

EAB Tribunal Cluster Organizational Chart



Energy Resource Appeal Tribunal

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Approved: February 2011
Amended: December 2012
Amended: July 1, 2016
Amended: April 2019
Amended: August 2023

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FORMS

[Form 1](#): Notice of Appeal – Land Owner (includes application to extend time to appeal)

[Form 2](#): Notice of Appeal – Non-Land Owners/“Eligible Persons” (includes application to extend time to appeal)

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INTRODUCTION

The Energy Resource Appeal Tribunal has made these Rules pursuant to [section 11\(1\) of the Administrative Tribunals Act](#). These Rules replace previous versions of the Rules made by the Tribunal.

If a matter arises during the appeal process that is not envisioned by these Rules, the Tribunal will take steps to ensure that the appeal process is fair and expeditious and in accordance with the applicable legislation and the principles of natural justice.

In the case of a conflict with any applicable statute or regulation, the statute or regulation will override these Rules.

In addition to these Rules, the Tribunal has prepared a comprehensive [Practice and Procedure Manual](#) which describes the general practices, procedures and policies that have been adopted by the Tribunal to fill in the gaps left by the legislation and the Rules. The Tribunal has also created [Information Sheets](#) on discrete subjects.

GENERAL

Rule 1 – Definitions

1. In these Rules:

“**Act**” means the *Oil and Gas Activities Act*;

“**address for delivery**” means the specific location where documents are to be sent during the appeal as identified by a party or intervener, or as may be inferred from the party or intervener’s usual method of delivering documents to the Tribunal and/or to the other parties and interveners, and may be the person’s current postal address, fax number, or email address;

“**appellant**” means the person bringing an appeal;

“**business day**” means 8:30 am to 4:30 pm, Monday through Friday, excluding public holidays;

“**calendar day**” is each day shown on a calendar and includes weekends and holidays;

“**day**” means “calendar day” unless it is expressly stated to be a “business day”;

“**document**” includes a letter, email, application, submission, reply, notice, photograph, chart, report, plan, sound recording, videotape, or other thing upon which information is communicated or recorded, but does not include a notice of appeal;

“**file**” or “**filing**” means effective delivery of a document to the Tribunal;

“**intervener**” means a person, other than a party, that the Tribunal allows to participate in an appeal under section 33 of the *Administrative Tribunals Act*;

“**member**” means a person appointed by Order in Council as a member of the Tribunal;

“**oral hearing**” means an in-person hearing;

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“**panel**” means those members (1 or 3 members) designated by the Tribunal Chair to hear an appeal;

“**party**” means an appellant, respondent, or third party in an appeal;

“**representative**” includes a lawyer or agent authorized to represent a person in an appeal;

“**respondent**” means the Oil and Gas Commission;

“**submission**” means written information or argument filed by a party or intervener for consideration by the Tribunal in support of, or in response to, an application or appeal;

“**third party**” means a person invited by the Tribunal to be a third party in an appeal; and

“**Tribunal**” means the Energy Resource Appeal Tribunal established under section 19 of the Act, and includes a member of the Tribunal.

Rule 2 – Applying the rules

1. All parties and interveners must comply with these Rules unless the Tribunal orders or directs otherwise under [section 11\(3\) of the Administrative Tribunals Act](#).
2. Unless otherwise stated, a Tribunal member may exercise any power under these Rules on the member’s own initiative or on the application of a party or intervener.
3. Unless otherwise directed by the Tribunal, these Rules apply to all appeals before the Tribunal, whether commenced before or after the date of these Rules.

Rule 3 – Effect of non-compliance

1. In addition to the Tribunal’s powers under [section 18 of the Administrative Tribunals Act](#), if a party or intervener fails to comply with these Rules or a procedural order or direction of the Tribunal, the Tribunal may:
 - a. make an order for costs; and/or
 - b. make any other decision or order the Tribunal considers appropriate in the circumstances.
2. Despite Rule 3(1), any technical defect or irregularity in form will not invalidate the Tribunal’s proceedings and does not constitute non-compliance with these Rules.

Rule 4 – Calculating time

1. To calculate deadlines under these Rules, or in any order or direction of the Tribunal, the days are counted as calendar days.
2. When a due date is to be counted forward in time (e.g., 10 calendar days to do something), the calendar days are counted by excluding the first day and including the last day. If the due date falls on a Saturday, Sunday or public holiday, the due date will be the next calendar day that is not a Saturday, Sunday or public holiday.
3. When counting backward from a hearing date to determine a due date (e.g., notice of expert reports and statement of points), the calendar days are counted by excluding the first day of

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the hearing and including the last day (i.e., the last day is the due date). If the due date falls on a Saturday, Sunday or public holiday, the due date will be the calendar day that falls before the Saturday, Sunday or public holiday (e.g., the Friday before the weekend).

4. The Tribunal may modify a time limit in the Rules or in any order or direction of the Tribunal, whether or not the time limit has already expired, if the Tribunal determines that it is fair and appropriate in the circumstances.

APPEALS AND PARTIES

Rule 5 – Starting an appeal

1. A person must file a notice of appeal with the Tribunal, which may be in [Form 1](#), containing the information required by [section 22 of the Administrative Tribunals Act](#).
2. The notice of appeal may be filed with the Tribunal by regular mail, registered or certified mail, courier, hand delivery, fax or email.

Deemed date of receipt of notice of appeal sent by registered or certified mail

3. If a notice of an appeal is sent to the Tribunal by registered or certified mail, the appeal is deemed to be received by the Tribunal on the official date stamp showing Canada Post's receipt of the document. For all other methods of delivery of a notice of appeal, the date of receipt is set out in Rule 12(9)-(10) [When documents are deemed to be delivered to the Tribunal].

Rule 6 – Extension of time to file an appeal

1. An application for an extension of time to file an appeal pursuant to [section 24\(2\) of the Administrative Tribunals Act](#) may be made by filing with the Tribunal an "Application to Extend the Time to File an Appeal" attached to [Form 1](#) and [Form 2](#) [Notices of Appeal], or by filing an application with the Tribunal containing the following information:
 - a. the reasons for the delay in filing the appeal; and
 - b. any special circumstances that the Tribunal should consider when making its decision on the extension request.
2. The application must accompany a completed notice of appeal in accordance with Rule 5(1);
3. The Tribunal will not take any further action on an appeal unless an extension of time is granted.

Rule 7 – Acknowledgement of appeal

1. Following receipt of a notice of appeal, the Tribunal will:
 - a. notify the appellant that the appeal has been received;

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- b. provide a copy of the notice of appeal and any documents included with it to the respondent, who will immediately be added as a party to the appeal;
- c. in accordance with in [section 72\(5\) of the Oil and Gas Activities Act](#), provide a copy of the notice of appeal and any documents included with it to the person that is the subject of the decision (e.g., the permit holder), if different from the appellant, and add that person as a third party to the appeal; and
- d. if the appeal is against a refusal to issue or amend a permit, provide a copy of the notice of appeal and any documents included with it to the land owner identified in [section 72\(5\) of the Oil and Gas Activities Act](#), and add the land owner as a party to the appeal upon the land owner's request.

Rule 8 – Delivery of the respondent's "record of decision"

- 1. The respondent's "record of decision" consists of the full content of the decision under appeal, the respondent's reasons for decision (if in a separate document), and, if the appeal is by a land owner, it includes any:
 - a. submissions made by the land owner to the respondent under sections 22(5) or 31(2) of the Act, and
 - b. reports submitted under section 24(1)(c) or 31(6) of the Act.
- 2. If the decision under appeal is a review decision, the original decision (determination) that was the subject of the review is also part of the respondent's decision record.
- 3. Unless the Tribunal directs otherwise, the respondent must deliver 2 copies of the decision record to the Tribunal, and 1 copy to each party, within 14 calendar days after notification of the appeal by the Tribunal under Rule 7 [Acknowledgement of appeal].
- 4. If the record of decision contains more than 1 document, the record of decision must include a table of contents and the documents must be organized by either numbering all documents consecutively, or by dividing the documents using tabs.
- 5. The documents provided in accordance with this Rule are not required to be resubmitted by the parties for the hearing.

Rule 9 - Representation before the Tribunal

- 1. If a party or intervener appoints a representative, the following information for the representative must be provided to the Tribunal:
 - a. full name of the representative;
 - b. the name of the party or intervener that the person is representing;
 - c. the representative's address;
 - d. the representative's daytime telephone number;
 - e. the representative's fax number and email address (if any); and

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- f. the representative's address for delivery [defined in Rule 1].
- 2. If a party or intervener has a representative, the address for delivery of the representative will be the address for delivery of the party or intervener.
- 3. A representative who withdraws or ceases to represent a party or intervener must immediately notify the Tribunal, in writing.

Rule 10 – Change in contact information

- 1. A party or intervener must immediately notify the Tribunal, in writing, of a change to the contact information for the party or intervener.

Rule 11 – Adding or removing interveners to an appeal

- 1. In addition to the requirements of Rule 18 [General application procedure], an application to be added as an intervener must include the following information:
 - a. the applicant's full name, address for delivery, telephone number, fax number and email address (if any);
 - b. the amount of participation sought in the appeal (e.g., to make written submissions only, to present evidence on a particular subject or issue, the ability to cross-examine witnesses, the ability to present opening and closing arguments);
 - c. a description of the following:
 - i. the issues the applicant seeks to address;
 - ii. the applicant's expertise or interest in a particular subject; and
 - iii. the particular perspective that the applicant will provide to the Tribunal and whether it is different from the perspectives of the parties.
- 2. If the application is allowed, the Tribunal will advise of any terms, conditions or limitations placed on the intervention in the appeal.
- 3. An application to remove an intervener must explain why the intervener ought to be prevented from participating in the appeal.

DOCUMENT DELIVERY

Rule 12 – Filing documents with the Tribunal

- 1. Unless otherwise ordered or directed, any document filed with the Tribunal must also be provided to all other parties and interveners to the appeal.
- 2. Each document filed with the Tribunal shall have all pages numbered consecutively or the documents must be organized using tabs.

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3. Documents may be filed with the Tribunal by mail, courier, hand delivery, email or fax, subject to any restrictions or conditions set out in these Rules.

Filing documents by email or fax

4. Documents, including any attachments, with a combined total of 10 pages or less may be filed with the Tribunal by email or by fax.
5. Documents, including any attachments, with a combined total of more than 10 pages may be sent to the Tribunal by email or fax, provided that a printed copy is filed with the Tribunal by mail, courier or hand delivery.
6. An email to the Tribunal must include the name of the sender.
7. A document sent to the Tribunal 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 call if there are transmission problems.

Filing multiple copies of a document

8. If multiple copies of a document are required to be filed with the Tribunal by these Rules, or by direction of the Tribunal, the required number of paper copies must be filed by mail, courier or hand delivery. The Tribunal will not make additional copies.

When documents are deemed to be delivered to the Tribunal

9. A document that is received by the Tribunal after the business day is deemed to be delivered on the next day business day.
10. If a document is sent to the Tribunal by fax or email, the document is not deemed to be delivered to the Tribunal until the transmission is received by the Tribunal, regardless of the date or time that it is shown to have been sent.

Rule 13 – Delivering documents to parties and interveners

1. Documents must be sent to the address for delivery of a party or intervener, unless the party or intervener consents to an alternative address for delivery or the Tribunal orders otherwise.
2. When an address for delivery is an email address, the sender of a document is not required to mail or otherwise provide a paper copy unless directed to do so by the Tribunal.
3. If a party or intervener does not consent to the delivery of documents by fax or email, the Tribunal may make an order directing that documents be delivered by fax or email, subject to any terms, conditions or limitations that are appropriate in the circumstances.

When delivery of a document is deemed to be complete

4. A document that is received by email or fax after the business day, is deemed to be delivered on the next business day.
5. If the Tribunal is required to serve notice or a document on a party or other person, and that party or other person wants to establish that, pursuant to [section 19\(5\) of the Administrative](#)

Energy Resource Appeal Tribunal RULES

[Tribunals Act](#), the notice or document was not received by the deemed date of delivery due to absence, accident, illness, or other cause beyond his or her control, the person must notify the Tribunal, in writing, as soon as practicable.

Alternative method of delivery

6. The Tribunal may approve an alternate method of delivering documents to a party or intervener if it is impractical to deliver a document to the specified address for delivery, or an alternate method is otherwise warranted in the circumstances.

APPEAL MANAGEMENT

Rule 14 – Joining or consolidating appeals

1. In addition to the powers under [section 37 of the Administrative Tribunals Act](#), if two or more appeals before the Tribunal involve the same parties, the Tribunal may direct, upon such terms as it considers appropriate, that the appeals be consolidated (combined), heard together with any other appeal before the Tribunal, or the Tribunal may direct that one appeal be heard immediately after the other.
2. The Tribunal will notify all parties and interveners if it decides to combine the appeals or use any other procedure listed above.
3. An objection to the Tribunal's decision to consolidate an appeal must be made to the Tribunal, in writing, as soon as practicable.

Rule 15 – Pre-hearing conferences

1. On its own initiative, or at the request of a party or intervener, the Tribunal may schedule a pre-hearing conference.
2. A request for a pre-hearing conference must be in writing, provide the reasons for the conference, potential dates, and include a list of the items to be discussed.
3. If the Tribunal decides that a pre-hearing conference is warranted in the circumstances, it will notify the parties and interveners of the time, date and place for the conference, or the dial-up instructions (if conducted by teleconference), and will advise of any terms or conditions that apply.
4. Where notice of a pre-hearing conference has been properly given and a party or intervener fails to participate without advance written notice, the Tribunal may proceed in their absence.
5. If a Tribunal member conducts a pre-hearing conference and confidential settlement matters are discussed, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

Rule 16 – Facilitated settlement (mediation)

1. On its own initiative, or at the request of a party, the Tribunal may conduct a settlement meeting (mediation) to resolve one or more issues in dispute.

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2. The Tribunal will not convene a settlement meeting (mediation) unless all parties to the appeal agree to participate in settlement discussions.
3. The Tribunal may appoint a Tribunal member or other person to conduct the facilitated settlement.
4. If a Tribunal member conducts the settlement meeting and the appeal is not resolved, that member will not sit on the panel that hears the merits of the appeal unless all parties agree, in writing.

Rule 17 – Consent orders

1. If the parties request an order from the Tribunal under [section 16\(1\)](#) or [section 17\(2\) of the *Administrative Tribunals Act*](#), the parties must provide the Tribunal with a copy of the order, executed by all parties, for consideration and signing by the Tribunal. The date must be left blank and will be filled in if the Tribunal signs the order.
2. An unexecuted copy of the consent order must also be provided to the Tribunal in Word format for posting on the Tribunal's website.

APPLICATIONS

Rule 18 – General procedure

1. All pre-hearing and post-hearing applications must be made to the Tribunal in writing. Pre-hearing applications include, but are not limited to, the following matters:
 - a. extensions, postponements, and adjournments ([section 39 *Administrative Tribunals Act*](#));
 - b. type of hearing (oral/written), expedited hearing, and change in the venue or location of a hearing;
 - c. stay of the decision under appeal or removal of an automatic stay ([sections 72\(3\) and\(4\) of the *Act*](#));
 - d. summary dismissal of an appeal ([section 31 of the *Administrative Tribunals Act*](#));
 - e. disclosure of particulars;
 - f. production of documents or objects ([section 34\(3\) of the *Administrative Tribunals Act*](#));
 - g. summons for a witness (order to attend a hearing) ([section 34\(3\) of the *Administrative Tribunals Act*](#));
 - h. intervener status;
 - i. costs or security for costs ([section 47 and 47.1 & 47.2 of the *Administrative Tribunals Act*](#));
 - j. site visits; and
 - k. evidentiary issues.

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2. All applications must include:
 - a. the grounds (the reasons) for the application;
 - b. the relief requested (the nature of the order or direction);
 - c. whether the other parties agree to it (if known); and
 - d. any evidence to be relied upon.
3. If more than 1 document is provided to the Tribunal as part of the evidence identified in Rule 18(2)(d), the documents must be organized by either numbering all documents consecutively, or by dividing the documents using tabs.

Applications for documents

4. Before applying for an order to produce documents under [section 34\(3\)\(b\) of the Administrative Tribunals Act](#), the applicant must ask the person in possession or control of the documents, in writing, to voluntarily produce the documents.
5. In addition to the requirements in Rule 18(2), an application for an order for documents must describe the attempts made to have the person voluntarily produce the documents.

HEARINGS

Rule 19 - Scheduling a hearing

1. The Tribunal will decide whether a hearing will be conducted:
 - a. orally,
 - b. by way of written submissions,
 - c. by telephone or videoconferencing, or
 - d. a combination of the above.
2. If the Tribunal schedules an oral hearing, or a hearing by telephone or videoconference, it will notify all parties and interveners of the date, time and location (or dial-in directions) of the hearing in a "notice of hearing".
3. If the Tribunal schedules a written hearing, it will notify the parties and interveners of the submission schedule.

Rule 20 - Failure to participate in a hearing

1. If an appellant has been given timely notice of the hearing and fails to attend the hearing or, if a written hearing, provide submissions in support of the appeal, the Tribunal may proceed with the hearing, dismiss the appeal as abandoned, or make any order appropriate in the circumstances.
2. If a respondent, third party, or intervener has been given timely notice of the hearing and fails to attend the hearing or, if a written hearing, provide submissions, the Tribunal may proceed with the hearing and disposition of the appeal without further notice to that party or intervener.

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Rule 21 – Oral hearings

Pre-hearing submissions (Statement of Points) and document disclosure

1. All parties are required to provide:
 - a. a Statement of Points containing:
 - i. a summary of his or her case to be presented at the hearing,
 - ii. a list of the witnesses to be called by that party (if any),
 - iii. the legal authorities (e.g., case law, legislation, legal articles or excerpts from text books) that will be relied upon at the hearing (if any); and
 - b. a copy of the documents that he or she will be referring to, or relying upon, at the hearing,

in the following quantities and according to the following schedule unless the Tribunal directs otherwise:

 - i. the appellant must deliver 2 copies of its Statement of Points and documents to the Tribunal, and 1 copy to each party and intervener, at least 30 calendar days before the hearing commences;
 - ii. the respondent and any other party must deliver 2 copies of their respective Statements of Points and documents to the Tribunal, and 1 copy to each other party and intervener, at least 15 calendar days before the hearing commences.
2. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
3. If a party intends to produce affidavit evidence at the hearing, the party must provide the affidavit evidence with the Statement of Points.
4. If a party wishes to cross-examine the affiant on the contents of the affidavit, that party must apply to the Tribunal within a reasonable amount of time after receiving the affidavit.
5. The Tribunal may require interveners to provide a Statement of Points, witness list, authorities and documents.
6. All parties and interveners must bring to the hearing 1 additional copy of all documents (excluding legal authorities and Statements of Points) intended to be tendered as evidence. This copy will be provided to the official recorder and marked as an exhibit, if and when required.
7. The Tribunal may allow an appeal to proceed to a hearing even if an appellant has not fully complied with this Rule if it is satisfied that the other parties and interveners have sufficient information to prepare for the hearing.

Energy Resource Appeal Tribunal

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Non-compliance with pre-hearing disclosure of documents, legal authorities, witnesses

8. Despite Rule 21(1), at a hearing, a party or intervener may refer to, or rely upon, documents or legal authorities not previously disclosed, or hear from witnesses that were not previously identified, with the approval of the hearing panel.
9. The party relying on new documents or legal authorities must bring sufficient copies to the hearing such that there is a copy for each panel member, the Tribunal's appeal file, and each party and intervener. A copy of a new document must also be provided to the official recorder. The official recorder does not require a copy of new legal authorities.

Photographing and recording during a hearing [as amended 04/19]

10. Photographing, audio recording, video recording or other electronic recording of Board proceedings is prohibited without the prior approval of the Board or the panel.

Rule 22 - Written hearings

1. All parties and interveners are required to provide their written submissions in accordance with the submission schedule established by the Tribunal, and in the following quantities, unless the Tribunal directs otherwise:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
2. All evidence (including affidavits and documents) and legal authorities must be included with the written submission.
3. Documents must be organized by numbering all pages consecutively, or by dividing the documents using tabs.
4. If a party:
 - a. seeks to cross-examine an affiant on the contents of an affidavit, or
 - b. seeks to have a portion of the written hearing conducted orally,the party must apply to the Tribunal.

Rule 23 – Interpreters, assistance for visually and hearing impaired and other accommodations

1. At least 30 calendar days before the hearing commences, a party or intervener must notify the Tribunal if he or she requires some type of accommodation or assistance to enable their meaningful participation at the hearing.

Energy Resource Appeal Tribunal

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2. The Tribunal will make every effort to accommodate that person's needs, as is reasonable in the circumstances.

Rule 24 - Closing of the record

1. At the conclusion of the hearing, the record will be closed unless the panel directs otherwise.
2. Once the record is closed, no additional evidence will be accepted unless the panel decides the evidence is material, and that there is a good reason for the failure to produce it in a timely fashion.
3. If an application to reopen the hearing to allow additional evidence is granted by the panel, the other parties will have an opportunity to reply to the new evidence.
4. The hearing will not be reopened once the Tribunal's final decision is issued.

WITNESSES

Rule 25 - Oath or affirmation

1. A person who gives evidence at an oral hearing is required to give that evidence under oath or affirmation.

Rule 26 - Application for a summons (order to attend as a witness)

1. If a proposed witness refuses to voluntarily attend a hearing to give evidence, a party may apply for an order requiring the person to attend the hearing to give evidence (a summons).
2. An application for this order must be made to the Tribunal at least 60 calendar days before the hearing is scheduled to commence.
3. Before applying to the Tribunal for this order, the applicant must ask the person to voluntarily attend as a witness.
4. In addition to the requirements in Rule 18 [General application procedure], an application for an order requiring a person to attend a hearing to give evidence must include the following information:
 - a. the name and address of the person wanted as a witness;
 - b. a brief summary of the evidence to be given by the witness, and an explanation of why the evidence is relevant and necessary;
 - c. the attempts made to have the witness voluntarily attend the hearing; and
 - d. if required, a list of the particular documents or other things the person must bring to the hearing.

Energy Resource Appeal Tribunal RULES

5. Unless there is evidence that a proposed witness will not attend the hearing voluntarily, the Tribunal will not issue an order under this Rule.

Serving the summons (order) and witness fees and expenses

6. The party who requested the order will be responsible for serving it on the person by leaving it with that person, or by leaving it at the person's usual residence, within a reasonable time before the date the person is required to appear.
7. The party who requested the order must pay any witness fees and expenses in accordance with [Schedule 3 of Appendix C of the BC Supreme Court Civil Rules](#), unless the witness is:
 - a. a party or intervener in the appeal;
 - b. a present officer, director or partner of a party or intervener in the appeal;
 - c. an employee of the provincial government; or
 - d. the Tribunal directs otherwise.

Application to amend or cancel a summons

8. A person who is subject to a summons ordered by the Tribunal may apply to the Tribunal for an order cancelling or varying the summons. The application must set out the reason(s) the order should be cancelled or its terms should be varied.
9. An application to vary the terms of, or to cancel, an order must also be delivered to the person that requested the order.

Rule 27 – Expert evidence

Expert report

1. Unless the Tribunal directs otherwise, a party must deliver a written statement or report by an expert at least 84 calendar days before the scheduled oral hearing date or, if the hearing is in writing, 84 calendar days before the appellant's first written submission is due, in the following quantities:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
2. The expert's qualifications must be included with the report.
3. If there is an oral hearing, 1 additional copy of the statement or report and the expert's qualifications must be brought to the hearing for the official recorder.

Energy Resource Appeal Tribunal

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Notice of expert testimony (without report)

4. Unless the Tribunal directs otherwise, a party that wishes to call an expert witness to testify at a hearing without a report must provide a notice of expert testimony at least 84 calendar days before the oral hearing is scheduled to commence in the following quantities:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
5. The notice must include:
 - a. the qualifications and areas of expertise of the witness;
 - b. a written summary of the opinion to be given at the hearing; and
 - c. the facts on which the opinion is based.
6. If there is an oral hearing, 1 additional copy of this notice must be brought to the hearing for the official recorder.

Expert reply

7. Unless the Tribunal directs otherwise, a party must deliver an expert's reply report or notice of an expert witness in reply, without a report, at least 42 calendar days before the oral hearing is scheduled to commence or, if the hearing is in writing, then 42 calendar days before the appellant's first written submissions are due, in the following quantities:
 - a. 2 copies to the Tribunal; and
 - b. 1 copy to each party and intervener.
8. Notice of an expert reply must contain the same information required in Rule 27(2) or (5), whichever applies.
9. If there is an oral hearing, 1 additional copy of the reply report or notice must be brought to the hearing for the official recorder.

Expert to be available for cross-examination

10. If a party wants to cross-examine an expert on his or her report, the party must provide reasonable advance notice to the party tendering the expert report, the Tribunal, and the other parties and interveners, advising that the expert is required to attend the hearing for cross-examination.

Energy Resource Appeal Tribunal

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Proving an expert's qualifications

11. A written statement of an expert's qualifications is proof that the expert has those qualifications, unless there is evidence to the contrary and the Tribunal finds otherwise.

Changing the dates for delivery of an expert report

12. The parties may, by agreement, change the dates for delivery of a report or summary under this Rule, provided that they will be prepared to proceed on the date scheduled for the hearing and advise the Tribunal of the agreement.

FORMS

[Form 1](#): Notice of Appeal – Land Owner (includes application to extend time to appeal)

[Form 2](#): Notice of Appeal – Non-Land Owners/“Eligible Persons” (includes application to extend time to appeal)



Energy Resource Appeal Tribunal

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Spencer Izen

British Columbia Freedom of Information and Privacy Association

AccessRequestFrom@fipa.bc.ca

November 23, 2023

Dear Mr. Izen,

**Re: Your Freedom of Information Request Dated November 3, 2023
FIPA file #FIPA FOI 2023-146**

I am writing in response to your request, submitted under the *Freedom of Information and Protection of Privacy Act*, for four classes of records, dating from January 1, 2021 to November 3, 2023:

- current organizational charts that indicate freedom of information personnel and information management personnel;
- delegation of authority charts for the *Freedom of Information and Protection of Privacy Act*;
- policies or procedures regarding freedom of information (not privacy), including policies and procedures regarding the routine release of information and proactive disclosure; and
- final reports regarding the public body's performance reporting, program evaluations, or project implementation plans or reviews with respect to freedom of information.

Your request also specifies that, if there is a conflict between the description of the classes above and the date range provided, the class of records takes priority.

With respect to the first class of records, I have attached our current organizational chart.

We do not have any records described in the second class of records, as I have not delegated my authority under the *Freedom of Information and Protection of Privacy Act*.

With respect to the third class of records, I have attached our Rules and our Manual of Practice and Procedure, which both address freedom of information.

We do not have any records described in the fourth class of records.

I hope that this is responsive to your request. Please advise if you need anything further.

Best wishes,

A handwritten signature in black ink, reading "D. Le Houillier". The signature is fluid and cursive, with the first name "D." and last name "Le Houillier" clearly distinguishable.

Darrell Le Houillier

Chair

Energy Resource Appeal Tribunal

Oil and Gas Appeal Tribunal

Access:	
Hicke, Carly	Case Manager/Registrar
DeWolfe, Vivia	Director, Finance and Operations
Mackian, Elizabeth	Finance & Web Administrator
Kimmett, Rene	Case Manager/Registrar
Van Weelden, Tessa	Case Manager/Registrar

Accession #	Tribunal	Destruction Date	Date of Materials	Location	Date Sent Offsite	Offsited By	Office Access updated	# of Boxes	Notes:
96-6596	Oil and Gas Appeal Tribunal	To be reviewed/determined	2010-2013	CUBE	2016-11-30		2021-06-15	6	OGAT Files, hearing info, audio CD, cassettes
97-0597	Oil and Gas Appeal Tribunal	To be reviewed/determined	2013-2016	CUBE	2018-03-27	Heather	2021-06-15	3	
97-2418	Oil and Gas Appeal Tribunal	To be reviewed/determined	2016-10-18 to 2017-10-15	CUBE	2018-03-19	Heather	2021-06-15	2	Appeal Files: 2016-OGA-004 2017-OGA-002 2017-OGA-024 2017-OGA-025 2017-OGA-027
97-3530	Oil and Gas Appeal Tribunal	To be reviewed/determined	2016-2018	CUBE	2019-01-17	Carly	2021-06-15	3	Appeal File: 2016-OGA-G01
97-4541	Oil and Gas Appeal Tribunal	To be reviewed/determined	2017-06-30 to 2018-11-14	CUBE	2019-08-14	Carly	2021-06-15	1	Appeal Files: 2017-OGA-033 2017-OGA-023 2018-OGA-G01 2018-OGA-004 2018-OGA-005
97-7897	Oil and Gas Appeal Tribunal	To be reviewed/determined	2017-06-09 to 2023-06-06	CUBE	2023-09-26	Carly	2021-06-15	6	Appeal Files: 2017-OGA-G01 2018-OGA-001 2019-OGA-001 2017-OGA-026 2018-OGA-006 2019-OGA-003 OGAT-OGA-21-A002 2019-OGA-004 OGAT-OGA-20-A001 2019-OGA-002 OGAT-OGA-21-A001 OGAT-OGA-22-A001 OGAT-OGA-23-A001

Neutral Citation	Decision Number	Appeal Name	Decision Date	Emailed to Canlii (reception@canlii.org)
2023 BCOGAT 1	OGAT-OGA-23-A001(a)	Brian and Carolyn Derfler v. BC Energy Regulator	2023-06-06	2023-06-06
2024 BCERAT 1	OGAT-OGA-22-A002(b), OGAT-OGA-22-A003(a)	Voss, L. v. BC Energy Regulator	2024-03-15	2024-03-15
2024 BCERAT 2	ERAT-ERA-24-A002(a)	Copeland, Alana and William v. BC Energy Regualtor	2024-04-30	2024-05-03
2024 BCERAT 3	ERAT-ERA-24-A001(a), EART-ERA-24-A003(a), EART-ERA-24-A004(a)	Ewald Heler & Claudia Pamela Heler v. BC Energy Regulator		

TITLE: CASE MANAGER

CLASSIFICATION: AO21

The Case Manager provides support for seven (7) independent adjudicative tribunals: the Community Care and Assisted Living Appeal Board, the Environmental Appeal Board, the Financial Services Tribunal, the Forest Appeals Commission, the Hospital Appeal Board, the Industry Training Appeal Board and the Oil and Gas Appeal Tribunal.

Each tribunal is governed by a different statute. They hear appeals from decisions made under twenty-two (22) different statutes and various associated regulations. The tribunals are supported by one administrative office which provides appeal registry services, legal advice, research support, systems support, financial/administrative services, and communication strategies throughout the province.

JOB OVERVIEW

The Case Manager is responsible for processing and managing all appeals for all seven (7) tribunals from intake to appeal hearing to file closure. This position is unique due to the number of agencies it serves and the scope of knowledge and skills required to serve those agencies. The responsibilities include: initial jurisdictional assessment of the appeal; overseeing the intake, screening, processing and tracking of appeals; conducting case management conferences; analyzing the file and identifying preliminary issues and providing advice regarding operational and procedural issues; procedural decision-making; conducting informal Alternate Dispute Resolution ("ADR") and identifying cases amenable to formal ADR; hearing panel preparation; post-adjudication panel support; and file closure. This position is the primary contact for parties, legal representatives, panel members, court recorders, contractors for hearings, and the public, and also speaks at full Board meetings. The Case Manager often deals with highly emotional participants in confrontational situations.

The Case Manager operates with a high degree of autonomy in high-pressure, dynamic, politically sensitive and contentious environments, in which each agency must consider the legislative and common law (administrative justice) rights of the appellant, respondent, third parties and participants. The Case Manager works with sensitive, confidential and high profile matters in an appeal process that is subject to public scrutiny, review by the courts, and has a significant impact on the public perception of each tribunal. Essential for this position is: knowledge of administrative law principles as well as the governing legislation, directives, policies and guidelines for each of the seven tribunals; confidence; good judgement; excellent communication skills; tact; discretion; and respect for confidentiality.

This position provides functional supervision to the Appeals Clerk and the contracted hearing recording secretaries (court recorders).

This position reports to the Vice Chair, Service Delivery of the Environmental Appeal Board, which provides administrative support for the Forest Appeals Commission, Oil and Gas Appeal Tribunal, and to the Director of Supported Boards, who oversees administration of the Community Care and Assisted Living Appeal Board, Financial Services Tribunal, Hospital Appeal Board, and the Industry Training Appeal Board.

ACCOUNTABILITIES/DELIVERABLES

Career Group:

Administrative Services

Job Family:

Administrative Support

Job Stream:

Role:

Administration

Revised Date:

June 2018

Provides efficient and effective case management support for all appeal files by processing and managing appeals filed with seven (7) tribunals from intake to closure of the file by:

- Screening incoming correspondence, requests, phone calls, and visitors to determine the nature and priority of the inquiry or request, and logging and referring those matters to the appropriate staff member for attention and/or response, if appropriate.
- Developing and enforcing strategies, methods and standards to ensure appeals are processed and managed in accordance with legislative requirements and internal policies and standards of the Environmental Appeal Board.
- Managing the lifecycle of all appeals, from submission of a notice of appeal through post-decision closure of the appeal file, including assessing jurisdiction under 22 statutes and the *Administrative Tribunals Act* and implementing records management protocols (ARCS/ORCS).
- Gathering all information pertaining to the appeal process; managing scheduling and arrangement of appeals; determining the need for, and arranging, the joinder of files, pre-appeal conferences, etc.
- Scheduling pre-appeal and case management conferences, as needed.
- Providing input and recommendations to the Vice Chair, Service Delivery and Chair of the Environmental Appeal Board regarding concerns related to jurisdiction and standing, procedural fairness concerns, the efficient conduct of appeals, pre-appeal conferences, statistical tracking, etc.
- Identifying cases amenable to ADR, conducting informal ADR and arranging for a formal ADR process where appropriate.
- Dealing with preliminary procedural issues within the framework established by the Environmental Appeal Board and supported Boards.
- Managing and coordinating receipt of written submissions and ensuring proper dissemination of documents for a hearing.
- Directing set up and coordination of appeals, including: scheduling, venue, recording secretaries, special arrangements, documents, technological requirements.
- Providing detailed operational and procedural information and assistance to the parties, the panel members and the public.
- Managing and disseminating, as appropriate, all tribunal orders, directions and decisions.
- Working closely with the Chair and Vice Chair, Service Delivery of the Environmental Appeal Board, the Director of Supported Boards, the five Chairs of the supported Boards, and fifty tribunal members to ensure an efficient and effective appeal process, identifying emerging and critical issues for them and alerting processes to accommodate unusual or special requests or requirements.
- Providing training on the case management system, supervising and coordinating staff assisting on large, complex appeal files.
- Managing relationships with contracted recording secretaries, service providers and ensuring services are provided in accordance with the contracts.
- Carrying out logistical work and special projects, as assigned by the Chair; Vice Chair, Service Delivery; and/or Director of Supported Boards of the Environmental Appeal Board.

Responsible for increasing public trust and confidence that actions taken by the seven (7) tribunals are consistent with their respective legislated mandates, their directives, policies and guidelines by:

- Acting as primary contact for parties, legal representatives, panel members, and the public on appeals, and providing outstanding customer service to any person seeking support from the tribunals regarding appeals or tribunal procedures generally.
- Establishing and maintaining effective communication links with Ministries and agencies to ensure effective exchange of information and consistent, constructive appeal processes.
- Responding to a large volume of sensitive telephone and written enquiries from parties, legal representatives, and the public regarding appeals and appeal processes.
- Exercising high level of judgement in dealing with angry or upset individuals and ensuring appropriate release of information.
- Responding to a variety of routine and non-routine correspondence; seeking advice from the respective tribunal Chair and/or legal advice from the tribunal's legal counsel, where appropriate.
- Providing advice and critical information to the respective tribunal Chair, either directly, or through the relevant Executive Director, concerning case-specific issues or policy issues relevant to the particular tribunal's mandate.
- Speaking at full Board meetings regarding process issues and making recommendations.

Ongoing utilization and monitoring of the case management system to ensure each tribunal's mandate and timelines are met by:

- Supervising and coordinating maintenance of the case management system according to the applicable standards; making recommendations for improvements and implementing changes.
- Entering and tracking all activities pertaining to appeals, producing regular reports, and developing and preparing ad hoc reports on each of the tribunal's activities and decisions as requested.
- Co-ordinating workflow, monitoring and tracking deadlines for submissions due via the case management system; triaging contentious issues and following up with the applicable person or party in the event of problems/delays.
- Drafting letters to parties and determining if the parties' documents, submissions or information is incomplete or insufficient.
- Providing information to be utilized and updated in the case management system to ensure proper control and tracking of workflow for each case, and for use in the Annual Reports.
- Managing appeal file closures and vetting of file content/structure for archiving.
- Identifying the need for, and participating in, the development and implementation of new procedures.
- Providing technical input on special projects.

JOB REQUIREMENTS

Education and Experience

- Degree in Law, a diploma or degree related to business, public administration or dispute resolution, OR an equivalent combination of relevant education and experience.
- Three (3) years' experience interpreting and applying legislation, regulations and policy in complex situations.
- Experience writing clear and concise letters, reports or decisions.
- Experience using non-adversarial dispute resolution techniques to resolve disputes in sensitive and contentious circumstances.
- Experience providing culturally sensitive, timely, respectful, quality service to the public in a high-volume, fast-paced environment.
- Experience developing effective working relationships with key internal and external stakeholders.
- Experience with database applications including Word, Excel, Outlook, Power Point.
- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as required by the ministry (**Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position**).

Preference may be given to applicants with:

- Experience applying the theories and principles of administrative law and rules of evidence.
- Investigative experience, gathering and securing of relevant information.

Knowledge, Skills and Abilities

- Ability to apply the theories and principles of administrative law, rules of evidence, common law, and administrative fairness/natural justice.
- Ability to work both in a team setting and independently, completing some or all work remotely.
- Proven ability to effectively organize a heavy workload and manage individual case files while meeting tight deadlines.

BEHAVIOURAL COMPETENCIES

- **Concern for Order** reflects an underlying drive to reduce uncertainty in the surrounding environment. It is expressed in such forms as monitoring and checking work or information, insisting on clarity of roles and functions, etc.

- **Planning, Organizing and Co-ordinating** involves proactively planning, establishing priorities and allocating resources. It is expressed by developing and implementing increasingly complex plans. It also involves monitoring and adjusting work to accomplish goals and deliver to the organization's mandate.
- **Decisive Insight** combines the ability to draw on one's own experience, knowledge and training and effectively problem-solve increasingly difficult and complex situations. It involves breaking down problems, tracing implications and recognizing patterns and connections that are not obviously related. It translates into identifying underlying issues and making the best decisions at the most appropriate time. At higher levels, the parameters upon which to base the decision become increasingly complex and ambiguous and call upon novel ways to think through issues.
- **Analytical Thinking** is the ability to comprehend a situation by breaking it down into its components and identifying key or underlying complex issues. It implies the ability to systematically organize and compare the various aspects of a problem or situation, and determine cause-and-effect relationships ("if...then...") to resolve problems in a sound, decisive manner. Checks to ensure the validity or accuracy of all information.
- **Listening, Responding and Understanding:** the desire and ability to understand and respond effectively to other people from diverse backgrounds. It includes the ability to understand accurately and respond effectively to spoken and unspoken or partly expressed thoughts, feelings and concerns of others. People who demonstrate high levels of this competency show a deep and complex understanding of others, including cross-cultural sensitivity.
- **Information Seeking** is driven by a desire to know more about things, people or issues. It implies going beyond the questions that are routine or required in the job. It may include "digging" or pressing for exact information; resolution of discrepancies by asking a series of questions; or less-focused environmental "scanning" for potential opportunities or miscellaneous information that may be of future use.
- **Results Orientation** - is a concern for surpassing a standard of excellence. The standard may be one's own past performance (striving for improvement); an objective measure (achievement orientation); challenging goals that one has set; or even improving or surpassing what has already been done (continuous improvement). Thus, a unique accomplishment also indicates a Results Orientation.
- **Teamwork and Cooperation:** the ability to work cooperatively within diverse teams, work groups and across the organization to achieve group and organizational goals.

TITLE: CASE MANAGER**CLASSIFICATION: AO21**

The Case Manager provides support for seven (7) independent adjudicative tribunals: the Community Care and Assisted Living Appeal Board, the Environmental Appeal Board, the Financial Services Tribunal, the Forest Appeals Commission, the Hospital Appeal Board, the Industry Training Appeal Board and the Oil and Gas Appeal Tribunal.

Each tribunal is governed by a different statute. They hear appeals from decisions made under twenty-two (22) different statutes and various associated regulations. The tribunals are supported by one administrative office which provides appeal registry services, legal advice, research support, systems support, financial/administrative services, and communication strategies throughout the province.

JOB OVERVIEW

The Case Manager is responsible for processing and managing all appeals for all seven (7) tribunals from intake to appeal hearing to file closure. This position is unique due to the number of agencies it serves and the scope of knowledge and skills required to serve those agencies. The responsibilities include: initial jurisdictional assessment of the appeal; overseeing the intake, screening, processing and tracking of appeals; conducting case management conferences; analyzing the file and identifying preliminary issues and providing advice regarding operational and procedural issues; procedural decision-making; conducting informal Alternate Dispute Resolution ("ADR") and identifying cases amenable to formal ADR; hearing panel preparation; post-adjudication panel support; and file closure. This position is the primary contact for parties, legal representatives, panel members, court recorders, contractors for hearings, and the public, and also speaks at full Board meetings. The Case Manager often deals with highly emotional participants in confrontational situations, and assists all seven (7) tribunals minimize costs by resolving disputes early and minimize costly preliminary decisions and decisions on the merits by members.

Specifically, the Case Manager supports the resolution of preliminary and on-the-merits matters before the tribunals by:

- a) Assisting the parties in reaching resolution by agreement independently or via mediation;*
- b) Reviewing appeals and identifying issues under dispute, the associated facts, and confirming that the appropriate parties are included in any preliminary or merits-based settlement or adjudicative process;*
- c) Providing a neutral, non-binding evaluation where appropriate;*
- d) Preparing the parties for adjudication of the matter(s) in dispute; and*
- e) Recommending to the tribunal process(es) to be used in resolving a dispute.*

Case Managers have also been delegated decision-making authority by the Chair of the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal, as authorized in the Administrative Tribunals Act. Case Managers are authorized to accept or reject notices of appeal, and to dismiss appeals in a variety of circumstances.

The Case Manager operates with a high degree of autonomy in high-pressure, dynamic, time-sensitive, politically sensitive and contentious environments, in which each agency must consider the legislative and common law (administrative justice) rights of the appellant, respondent, third parties and participants. The Case Manager works with sensitive, confidential and high profile matters in an appeal process that is subject to public scrutiny, review by the courts, and has a significant impact on the public perception of each tribunal. The Case Manager also delegates work to the Intake Administrator, and has supervisory authority and training responsibilities with that position. The Case Manager is also responsible for supervising and signing off on contracted services from court reporters and other professionals associated with the conduct of oral hearings.

Essential for this position is: knowledge of administrative law principles as well as the governing legislation, directives, policies and guidelines for each of the seven tribunals; confidence; good judgement; excellent communication skills; tact; discretion; and respect for confidentiality.

This position reports to the Vice Chair/Registrar of the Environmental Appeal Board, which provides administrative support for the Forest Appeals Commission, Oil and Gas Appeal Tribunal, and to the Director of Supported Boards, who oversees administration of the Community Care and Assisted Living Appeal Board, Financial Services Tribunal, Hospital Appeal Board, and the Industry Training Appeal Board.

ACCOUNTABILITIES/DELIVERABLES

Provides efficient and effective case management support for all appeal files by processing and managing appeals filed with seven (7) tribunals from intake to closure of the file by:

- Managing a significant and diverse caseload, while adhering to tight timelines and the requirements of procedural fairness and natural justice, and, along with the Vice Chair/Registrar; Director, Supported Board; and the Chair of the applicable tribunal, determine the appropriate and proportional level of tribunal resources to dedicate to the resolution of each appeal.
- Assigning appeal-related work, as appropriate, to the Intake Administrator, and supervising and educating the Intake Administrator with respect to work assigned.
- Serving as main contact with parties contracted to provide hearing-related services, such as court recorders and hearing venues, and to provide instruction and feedback with respect to the requirements of the tribunals' rules and procedures, including matters impacting procedural fairness.
- Participating in program meetings to ensure consistency in service delivery and harmonized standards across seven tribunals, and to make recommendations for the improvement of service delivery, including access to justice, timeliness and efficiency of processes, and reconciliation efforts.
- Screening incoming correspondence, requests, phone calls, and visitors to determine the nature and priority of the inquiry or request, and logging that contact, prior to using knowledge of practices, procedure, and administrative law authorities and principles to address the request or inquiry, or to refer matters to the appropriate staff member for attention and/or response, if appropriate.
- Developing and enforcing strategies, methods and standards to ensure appeals are processed and managed in accordance with legislative requirements and internal policies and standards of the Environmental Appeal Board, and to assist with the continuous improvement of registry services, through the development, implementation, and assessment of projects and initiatives to address changing priorities, program needs, and access to justice concerns.

- Managing the lifecycle of all appeals, from submission of a notice of appeal through post-decision closure of the appeal file, including assessing jurisdiction under 22 statutes and the *Administrative Tribunals Act* and implementing records management protocols (ARCS/ORCS).
- Determining issues of jurisdiction, standing, availability of remedy, and application of filing deadlines, and to dismiss appeals within the scope of delegation made by the Chair of the Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal.
- Verifying that all required parties and interested parties are included in the appeal process and recommending whether parties, participants or interveners should be invited to participate in the appeal process.
- Gathering all information pertaining to the appeal process; managing scheduling and arrangement of appeals; determining the need for, and arranging, the joinder of files, pre-appeal conferences, orders for the disclosure of records or other things in the parties' possession, the gathering and disclosure of expert evidence, and parties' position with respect to settlement, etc.
- Scheduling pre-appeal and case management conferences, as needed.
- Providing input and recommendations to the Vice Chair/Registrar and Chair of the Environmental Appeal Board regarding concerns related to jurisdiction and standing, procedural fairness concerns, the efficient conduct of appeals, pre-appeal conferences, statistical tracking, etc.
- Identifying cases amenable to ADR, conducting informal ADR and arranging for a formal ADR process where appropriate.
- Dealing with preliminary procedural issues within the framework established by the Environmental Appeal Board and supported Boards.
- Managing and coordinating receipt of written submissions and ensuring proper dissemination of documents for a hearing.
- Directing set up and coordination of appeals, including: scheduling, venue, recording secretaries, special arrangements, documents, technological requirements.
- Providing detailed operational and procedural information and assistance to the parties, the panel members and the public.
- Managing and disseminating, as appropriate, all tribunal orders, directions and decisions.
- Working closely with the Chair and Vice Chair/Registrar of the Environmental Appeal Board, the Director of Supported Boards, the five Chairs of the supported Boards, and fifty tribunal members to ensure an efficient and effective appeal process, identifying emerging and critical issues for them and alerting processes to accommodate unusual or special requests or requirements.
- Providing training on the case management system, supervising and coordinating staff assisting on large, complex appeal files.
- Managing relationships with contracted recording secretaries, service providers and ensuring services are provided in accordance with the contracts.
- Carrying out logistical work and special projects, as assigned by the Chair; Vice Chair/Registrar; and/or Director of Supported Boards of the Environmental Appeal Board.

Responsible for increasing public trust and confidence that actions taken by the seven (7) tribunals are consistent with their respective legislated mandates, their directives, policies and guidelines by:

- Acting as primary contact for parties, legal representatives, panel members, and the public on appeals, and providing outstanding customer service to any person seeking support from the tribunals regarding appeals or tribunal procedures generally.
- Establishing and maintaining effective communication links with Ministries and agencies to ensure effective exchange of information and consistent, constructive appeal processes.
- Responding to a large volume of sensitive telephone and written enquiries from parties, legal representatives, and the public regarding appeals and appeal processes.
- Exercising high level of judgement in dealing with angry or upset individuals and ensuring appropriate release of information.
- Responding to a variety of routine and non-routine correspondence; seeking advice from the respective tribunal Chair and/or legal advice from the tribunal's legal counsel, where appropriate.
- Providing advice and critical information to the respective tribunal Chair, either directly, or through the relevant Executive Director, concerning case-specific issues or policy issues relevant to the particular tribunal's mandate.
- Speaking at full Board meetings regarding process issues and making recommendations.

Ongoing utilization and monitoring of the case management system to ensure each tribunal's mandate and timelines are met by:

- Supervising and coordinating maintenance of the case management system according to the applicable standards; making recommendations for improvements and implementing changes.
- Entering and tracking all activities pertaining to appeals, producing regular reports, and developing and preparing ad hoc reports on each of the tribunal's activities and decisions as requested.
- Co-ordinating workflow, monitoring and tracking deadlines for submissions due via the case management system; triaging contentious issues and following up with the applicable person or party in the event of problems/delays.
- Drafting letters to parties and determining if the parties' documents, submissions or information is incomplete or insufficient.
- Providing information to be utilized and updated in the case management system to ensure proper control and tracking of workflow for each case, and for use in the Annual Reports.
- Managing appeal file closures and vetting of file content/structure for archiving.
- Identifying the need for, and participating in, the development and implementation of new procedures.
- Providing technical input on special projects.

JOB REQUIREMENTS

Education and Experience

- Degree in Law, a diploma or degree related to business, public administration or dispute resolution, OR an equivalent combination of relevant education and experience.
- Three (3) years' experience interpreting and applying legislation, regulations and policy in complex situations.
- Experience managing high-volume case loads with a view to customer/user service.
- Experience writing clear and concise letters, reports or decisions.
- Experience using non-adversarial dispute resolution techniques to resolve disputes in sensitive and contentious circumstances.
- Experience providing culturally sensitive, timely, respectful, quality service to the public in a high-volume, fast-paced environment.
- Experience supervising staff.
- Experience developing effective working relationships with key internal and external stakeholders.
- Experience with database applications including Word, Excel, Outlook, Power Point.
- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as required by the ministry (**Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position**).

Preference may be given to applicants with:

- Experience applying the theories and principles of administrative law and rules of evidence.
- Investigative experience, gathering and securing of relevant information.

Knowledge, Skills and Abilities

- Ability to apply the theories and principles of administrative law, rules of evidence, common law, and administrative fairness/natural justice.
- Ability to diffuse volatile situations with difficult, upset and often irate clients while focusing on fair outcomes.
- Ability to gather and secure relevant information using effective listening and questioning skills.
- Strong verbal and written communication skills, in order to clearly, concisely and respectfully convey information in plain language. Ability to work both in a team setting and independently, completing some or all work remotely.
- Proven ability to effectively organize a heavy workload and manage individual case files while meeting tight deadlines.

- Ability to operate effectively in a near paperless environment, using only computer-based systems to manage work, document outcomes and record qualitative and quantitative data.
- Ability to learn and effective use novel and rapidly-changing technology platforms, and to assist others in doing so.

Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check as required by the ministry (**Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position**).

BEHAVIOURAL COMPETENCIES

- **Concern for Order** reflects an underlying drive to reduce uncertainty in the surrounding environment. It is expressed in such forms as monitoring and checking work or information, insisting on clarity of roles and functions, etc.
- **Leadership** - implies a desire to lead others including diverse teams. Leadership is generally, but not always, demonstrated from a position of formal authority. The “team” here should be understood broadly as any group with which the person interacts regularly
- **Planning, Organizing and Co-ordinating** involves proactively planning, establishing priorities and allocating resources. It is expressed by developing and implementing increasingly complex plans. It also involves monitoring and adjusting work to accomplish goals and deliver to the organization’s mandate.
- **Decisive Insight** combines the ability to draw on one's own experience, knowledge and training and effectively problem-solve increasingly difficult and complex situations. It involves breaking down problems, tracing implications and recognizing patterns and connections that are not obviously related. It translates into identifying underlying issues and making the best decisions at the most appropriate time. At higher levels, the parameters upon which to base the decision become increasingly complex and ambiguous and call upon novel ways to think through issues.
- **Analytical Thinking** is the ability to comprehend a situation by breaking it down into its components and identifying key or underlying complex issues. It implies the ability to systematically organize and compare the various aspects of a problem or situation, and determine cause-and-effect relationships ("if...then...") to resolve problems in a sound, decisive manner. Checks to ensure the validity or accuracy of all information.
- **Listening, Responding and Understanding:** the desire and ability to understand and respond effectively to other people from diverse backgrounds. It includes the ability to understand accurately and respond effectively to spoken and unspoken or partly expressed thoughts, feelings and concerns of others. People who demonstrate high levels of this competency show a deep and complex understanding of others, including cross-cultural sensitivity.
- **Information Seeking** is driven by a desire to know more about things, people or issues. It implies going beyond the questions that are routine or required in the job. It may include "digging" or pressing for exact information; resolution of discrepancies by asking a series of questions; or less-focused

environmental "scanning" for potential opportunities or miscellaneous information that may be of future use.

- **Results Orientation** - is a concern for surpassing a standard of excellence. The standard may be one's own past performance (striving for improvement); an objective measure (achievement orientation); challenging goals that one has set; or even improving or surpassing what has already been done (continuous improvement). Thus, a unique accomplishment also indicates a Results Orientation.
- **Teamwork and Cooperation:** the ability to work cooperatively within diverse teams, work groups and across the organization to achieve group and organizational goals.
- **Flexibility** - is the ability and willingness to adapt to and work effectively with a variety of diverse situations and diverse individuals or groups.

TITLE: CASE MANAGER**CLASSIFICATION: AO24**

The Case Manager provides support for seven (7) independent adjudicative tribunals: the Community Care and Assisted Living Appeal Board, the Environmental Appeal Board, the Financial Services Tribunal, the Forest Appeals Commission, the Hospital Appeal Board, the Skilled Trades BC Appeal Board and the Energy Resource Appeal Tribunal.

Each tribunal is governed by a different statute. They hear appeals from decisions made under twenty-two (22) different statutes and various associated regulations. The tribunals are supported by one administrative office which provides appeal registry services, legal advice, research support, systems support, financial/administrative services, and communication strategies throughout the province.

JOB OVERVIEW

The Case Manager is responsible for processing and managing all appeals for all seven (7) tribunals from intake to appeal hearing to file closure. This position is unique due to the number of agencies it serves and the scope of knowledge and skills required to serve those agencies. The responsibilities include: initial jurisdictional assessment of the appeal; overseeing the intake, screening, processing and tracking of appeals; conducting case management conferences; analyzing the file and identifying preliminary issues and providing advice regarding operational and procedural issues; procedural decision-making; conducting informal Alternate Dispute Resolution ("ADR") and identifying cases amenable to formal ADR; hearing panel preparation; post-adjudication panel support; and file closure. This position is the primary contact for parties, legal representatives, panel members, court recorders, contractors for hearings, and the public, and also speaks at full Board meetings. The Case Manager often deals with highly emotional participants in confrontational situations, and assists all seven (7) tribunals minimize costs by resolving disputes early and minimize costly preliminary decisions and decisions on the merits by members.

Specifically, the Case Manager supports the resolution of preliminary and on-the-merits matters before the tribunals by:

- a) Assisting the parties in reaching resolution by agreement independently or via mediation;*
- b) Reviewing appeals and identifying issues under dispute, the associated facts, and confirming that the appropriate parties are included in any preliminary or merits-based settlement or adjudicative process;*
- c) Providing a neutral, non-binding evaluation where appropriate;*
- d) Preparing the parties for adjudication of the matter(s) in dispute; and*
- e) Recommending to the tribunal process(es) to be used in resolving a dispute.*

Case Managers have also been delegated decision-making authority by the Chair of the Environmental Appeal Board, Forest Appeals Commission, and Energy Resource Appeal Tribunal, as authorized in the Administrative Tribunals Act. Case Managers are authorized to accept or reject notices of appeal, and to dismiss appeals in a variety of circumstances.

The Case Manager operates with a high degree of autonomy in high-pressure, dynamic, time-sensitive, politically sensitive and contentious environments, in which each agency must consider the legislative and common law (administrative justice) rights of the appellant, respondent, third parties and participants. The Case Manager works with sensitive, confidential and high profile matters in an appeal process that is subject to public scrutiny, review by the courts, and has a significant impact on the public perception of each tribunal. The Case Manager also delegates work to the Intake Administrator, and has supervisory authority and training responsibilities with that position. The Case Manager is also responsible for supervising and signing off on contracted services from court reporters and other professionals associated with the conduct of oral hearings.

Essential for this position is: knowledge of administrative law principles as well as the governing legislation, directives, policies and guidelines for each of the seven tribunals; confidence; good judgement; excellent communication skills; tact; discretion; and respect for confidentiality.

This position reports to the Vice Chair and Registrar of the Environmental Appeal Board, which provides administrative support for the Forest Appeals Commission, Energy Resource Appeal Tribunal, and to the Director of Supported Boards, who oversees administration of the Community Care and Assisted Living Appeal Board, Financial Services Tribunal, Hospital Appeal Board, and the Skilled Trades BC Appeal Board.

ACCOUNTABILITIES/DELIVERABLES

Provides efficient and effective case management support for all appeal files by processing and managing appeals filed with seven (7) tribunals from intake to closure of the file by:

- Managing a significant and diverse caseload, while adhering to tight timelines and the requirements of procedural fairness and natural justice, and, along with the Vice Chair and Registrar; Director, Supported Board; and the Chair of the applicable tribunal, determine the appropriate and proportional level of tribunal resources to dedicate to the resolution of each appeal.
- Assigning appeal-related work, as appropriate, to the Intake Administrator, and supervising and educating the Intake Administrator with respect to work assigned.
- Serving as main contact with parties contracted to provide hearing-related services, such as court recorders and hearing venues, and to provide instruction and feedback with respect to the requirements of the tribunals' rules and procedures, including matters impacting procedural fairness.
- Participating in program meetings to ensure consistency in service delivery and harmonized standards across seven tribunals, and to make recommendations for the improvement of service delivery, including access to justice, timeliness and efficiency of processes, and reconciliation efforts.
- Screening incoming correspondence, requests, phone calls, and visitors to determine the nature and priority of the inquiry or request, and logging that contact, prior to using knowledge of practices, procedure, and administrative law authorities and principles to address the request or inquiry, or to refer matters to the appropriate staff member for attention and/or response, if appropriate.
- Developing and enforcing strategies, methods and standards to ensure appeals are processed and managed in accordance with legislative requirements and internal policies and standards of the Environmental Appeal Board, and to assist with the continuous improvement of registry services, through the development, implementation, and assessment of projects and initiatives to address changing priorities, program needs, and access to justice concerns.

- Managing the lifecycle of all appeals, from submission of a notice of appeal through post-decision closure of the appeal file, including assessing jurisdiction under 22 statutes and the *Administrative Tribunals Act* and implementing records management protocols (ARCS/ORCS).
- Determining issues of jurisdiction, standing, availability of remedy, and application of filing deadlines, and to dismiss appeals within the scope of delegation made by the Chair of the Environmental Appeal Board, Forest Appeals Commission, and Energy Resource Appeal Tribunal.
- Verifying that all required parties and interested parties are included in the appeal process and recommending whether parties, participants or interveners should be invited to participate in the appeal process.
- Gathering all information pertaining to the appeal process; managing scheduling and arrangement of appeals; determining the need for, and arranging, the joinder of files, pre-appeal conferences, orders for the disclosure of records or other things in the parties' possession, the gathering and disclosure of expert evidence, and parties' position with respect to settlement, etc.
- Scheduling pre-appeal and case management conferences, as needed.
- Providing input and recommendations to the Vice Chair and Registrar and Chair of the Environmental Appeal Board regarding concerns related to jurisdiction and standing, procedural fairness concerns, the efficient conduct of appeals, pre-appeal conferences, statistical tracking, etc.
- Identifying cases amenable to ADR, conducting informal ADR and arranging for a formal ADR process where appropriate.
- Dealing with preliminary procedural issues within the framework established by the Environmental Appeal Board and supported Boards.
- Managing and coordinating receipt of written submissions and ensuring proper dissemination of documents for a hearing.
- Directing set up and coordination of appeals, including: scheduling, venue, recording secretaries, special arrangements, documents, technological requirements.
- Providing detailed operational and procedural information and assistance to the parties, the panel members and the public.
- Managing and disseminating, as appropriate, all tribunal orders, directions and decisions.
- Working closely with the Chair and Vice Chair and Registrar of the Environmental Appeal Board, the Director of Supported Boards, the five Chairs of the supported Boards, and fifty tribunal members to ensure an efficient and effective appeal process, identifying emerging and critical issues for them and alerting processes to accommodate unusual or special requests or requirements.
- Providing training on the case management system, supervising and coordinating staff assisting on large, complex appeal files.
- Managing relationships with contracted recording secretaries, service providers and ensuring services are provided in accordance with the contracts.
- Carrying out logistical work and special projects, as assigned by the Chair; Vice Chair and Registrar; and/or Director of Supported Boards of the Environmental Appeal Board.

Responsible for increasing public trust and confidence that actions taken by the seven (7) tribunals are consistent with their respective legislated mandates, their directives, policies and guidelines by:

- Acting as primary contact for parties, legal representatives, panel members, and the public on appeals, and providing outstanding customer service to any person seeking support from the tribunals regarding appeals or tribunal procedures generally.
- Establishing and maintaining effective communication links with Ministries and agencies to ensure effective exchange of information and consistent, constructive appeal processes.
- Responding to a large volume of sensitive telephone and written enquiries from parties, legal representatives, and the public regarding appeals and appeal processes.
- Exercising high level of judgement in dealing with angry or upset individuals and ensuring appropriate release of information.
- Responding to a variety of routine and non-routine correspondence; seeking advice from the respective tribunal Chair and/or legal advice from the tribunal's legal counsel, where appropriate.
- Providing advice and critical information to the respective tribunal Chair, either directly, or through the relevant Executive Director, concerning case-specific issues or policy issues relevant to the particular tribunal's mandate.
- Speaking at full Board meetings regarding process issues and making recommendations.

Ongoing utilization and monitoring of the case management system to ensure each tribunal's mandate and timelines are met by:

- Supervising and coordinating maintenance of the case management system according to the applicable standards; making recommendations for improvements and implementing changes.
- Entering and tracking all activities pertaining to appeals, producing regular reports, and developing and preparing ad hoc reports on each of the tribunal's activities and decisions as requested.
- Co-ordinating workflow, monitoring and tracking deadlines for submissions due via the case management system; triaging contentious issues and following up with the applicable person or party in the event of problems/delays.
- Drafting letters to parties and determining if the parties' documents, submissions or information is incomplete or insufficient.
- Providing information to be utilized and updated in the case management system to ensure proper control and tracking of workflow for each case, and for use in the Annual Reports.
- Managing appeal file closures and vetting of file content/structure for archiving.
- Identifying the need for, and participating in, the development and implementation of new procedures.
- Providing technical input on special projects.

JOB REQUIREMENTS

Education and Experience

- Degree in Law, a diploma or degree related to business, public administration or dispute resolution, OR an equivalent combination of relevant education and experience.
- Three (3) years' experience interpreting and applying legislation, regulations and policy in complex situations.
- Experience managing high-volume case loads with a view to customer/user service.
- Experience writing clear and concise letters, reports or decisions.
- Experience using non-adversarial dispute resolution techniques to resolve disputes in sensitive and contentious circumstances.
- Experience providing culturally sensitive, timely, respectful, quality service to the public in a high-volume, fast-paced environment.
- Experience supervising staff.
- Experience developing effective working relationships with key internal and external stakeholders.
- Experience with database applications including Word, Excel, Outlook, Power Point.
- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as required by the ministry (**Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position**).

Preference may be given to applicants with:

- Experience applying the theories and principles of administrative law and rules of evidence.
- Investigative experience, gathering and securing of relevant information.

Knowledge, Skills and Abilities

- Ability to apply the theories and principles of administrative law, rules of evidence, common law, and administrative fairness/natural justice.
- Ability to diffuse volatile situations with difficult, upset and often irate clients while focusing on fair outcomes.
- Ability to gather and secure relevant information using effective listening and questioning skills.
- Strong verbal and written communication skills, in order to clearly, concisely and respectfully convey information in plain language. Ability to work both in a team setting and independently, completing some or all work remotely.
- Proven ability to effectively organize a heavy workload and manage individual case files while meeting tight deadlines.

- Ability to operate effectively in a near paperless environment, using only computer-based systems to manage work, document outcomes and record qualitative and quantitative data.
- Ability to learn and effective use novel and rapidly-changing technology platforms, and to assist others in doing so.

Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check as required by the ministry (**Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position**).

BEHAVIOURAL COMPETENCIES

- **Concern for Order** reflects an underlying drive to reduce uncertainty in the surrounding environment. It is expressed in such forms as monitoring and checking work or information, insisting on clarity of roles and functions, etc.
- **Leadership** - implies a desire to lead others including diverse teams. Leadership is generally, but not always, demonstrated from a position of formal authority. The “team” here should be understood broadly as any group with which the person interacts regularly
- **Planning, Organizing and Co-ordinating** involves proactively planning, establishing priorities and allocating resources. It is expressed by developing and implementing increasingly complex plans. It also involves monitoring and adjusting work to accomplish goals and deliver to the organization’s mandate.
- **Decisive Insight** combines the ability to draw on one's own experience, knowledge and training and effectively problem-solve increasingly difficult and complex situations. It involves breaking down problems, tracing implications and recognizing patterns and connections that are not obviously related. It translates into identifying underlying issues and making the best decisions at the most appropriate time. At higher levels, the parameters upon which to base the decision become increasingly complex and ambiguous and call upon novel ways to think through issues.
- **Analytical Thinking** is the ability to comprehend a situation by breaking it down into its components and identifying key or underlying complex issues. It implies the ability to systematically organize and compare the various aspects of a problem or situation, and determine cause-and-effect relationships ("if...then...") to resolve problems in a sound, decisive manner. Checks to ensure the validity or accuracy of all information.
- **Listening, Responding and Understanding:** the desire and ability to understand and respond effectively to other people from diverse backgrounds. It includes the ability to understand accurately and respond effectively to spoken and unspoken or partly expressed thoughts, feelings and concerns of others. People who demonstrate high levels of this competency show a deep and complex understanding of others, including cross-cultural sensitivity.
- **Information Seeking** is driven by a desire to know more about things, people or issues. It implies going beyond the questions that are routine or required in the job. It may include "digging" or pressing for exact information; resolution of discrepancies by asking a series of questions; or less-focused

environmental "scanning" for potential opportunities or miscellaneous information that may be of future use.

- **Results Orientation** - is a concern for surpassing a standard of excellence. The standard may be one's own past performance (striving for improvement); an objective measure (achievement orientation); challenging goals that one has set; or even improving or surpassing what has already been done (continuous improvement). Thus, a unique accomplishment also indicates a Results Orientation.
- **Teamwork and Cooperation:** the ability to work cooperatively within diverse teams, work groups and across the organization to achieve group and organizational goals.
- **Flexibility** - is the ability and willingness to adapt to and work effectively with a variety of diverse situations and diverse individuals or groups.

TITLE: CASE MANAGER/REGISTRAR**CLASSIFICATION: AO21**

The Case Manager/Registrar provides support for seven (7) independent adjudicative tribunals: the Community Care and Assisted Living Appeal Board, the Environmental Appeal Board, the Financial Services Tribunal, the Forest Appeals Commission, the Hospital Appeal Board, the Industry Training Appeal Board and the Oil and Gas Appeal Tribunal.

Each tribunal is governed by a different statute. They hear appeals from decisions made under twenty-two (22) different statutes and various associated regulations. The tribunals are supported by one administrative office which provides appeal registry services, legal advice, research support, systems support, financial/administrative services, and communication strategies throughout the province.

JOB OVERVIEW

The Case Manager/Registrar is responsible for processing and managing all appeals for all seven (7) tribunals from intake to appeal hearing to file closure. This position is unique due to the number of agencies it serves and the scope of knowledge and skills required to serve those agencies. The responsibilities include: initial jurisdictional assessment of the appeal; overseeing the intake, screening, processing and tracking of appeals; conducting case management conferences; analyzing the file and identifying preliminary issues and providing advice regarding operational and procedural issues; procedural decision-making; conducting informal Alternate Dispute Resolution ("ADR") and identifying cases amenable to formal ADR; hearing panel preparation; post-adjudication panel support; and file closure. This position is the primary contact for parties, legal representatives, panel members, court recorders, contractors for hearings, and the public, and also speaks at full Board meetings. The Case Manager/Registrar often deals with highly emotional participants in confrontational situations.

The Case Manager/Registrar operates with a high degree of autonomy in high-pressure, dynamic, politically sensitive and contentious environments, in which each agency must consider the legislative and common law (administrative justice) rights of the appellant, respondent, third parties and participants. The Case Manager/Registrar works with sensitive, confidential and high profile matters in an appeal process that is subject to public scrutiny, review by the courts, and has a significant impact on the public perception of each tribunal. Essential for this position is: knowledge of administrative law principles as well as the governing legislation, directives, policies and guidelines for each of the seven tribunals; confidence; good judgement; excellent communication skills; tact; discretion; and respect for confidentiality.

This position provides functional supervision to the Appeals Clerk, the Finance and Administrative Assistant, and the contracted hearing recording secretaries (court recorders).

This position reports to the Vice Chair, Service Delivery of the Environmental Appeal Board, which provides administrative support for the Forest Appeals Commission, Oil and Gas Appeal Tribunal, and to the Director of Supported Boards, who oversees administration of the Community Care and Assisted Living Appeal Board, Financial Services Tribunal, Hospital Appeal Board, and the Industry Training Appeal Board.

ACCOUNTABILITIES/DELIVERABLES

Career Group:

Administrative Services

Job Family:

Administrative Support

Job Stream:

Role:

Administration

Revised Date:

June 2018

Provides efficient and effective case management support for all appeal files by processing and managing appeals filed with seven (7) tribunals from intake to closure of the file by:

- Screening incoming correspondence, requests, phone calls, and visitors to determine the nature and priority of the inquiry or request, and logging and referring those matters to the appropriate staff member for attention and/or response, if appropriate.
- Developing and enforcing strategies, methods and standards to ensure appeals are processed and managed in accordance with legislative requirements and internal policies and standards of the Environmental Appeal Board.
- Managing the lifecycle of all appeals, from submission of a notice of appeal through post-decision closure of the appeal file, including assessing jurisdiction under 22 statutes and the *Administrative Tribunals Act* and implementing records management protocols (ARCS/ORCS).
- Gathering all information pertaining to the appeal process; managing scheduling and arrangement of appeals; determining the need for, and arranging, the joinder of files, pre-appeal conferences, etc.
- Scheduling pre-appeal and case management conferences, as needed.
- Providing input and recommendations to the Vice Chair, Service Delivery and Chair of the Environmental Appeal Board regarding concerns related to jurisdiction and standing, procedural fairness concerns, the efficient conduct of appeals, pre-appeal conferences, statistical tracking, etc.
- Identifying cases amenable to ADR, conducting informal ADR and arranging for a formal ADR process where appropriate.
- Dealing with preliminary procedural issues within the framework established by the Environmental Appeal Board and supported Boards.
- Managing and coordinating receipt of written submissions and ensuring proper dissemination of documents for a hearing.
- Directing set up and coordination of appeals, including: scheduling, venue, recording secretaries, special arrangements, documents, technological requirements.
- Providing detailed operational and procedural information and assistance to the parties, the panel members and the public.
- Managing and disseminating, as appropriate, all tribunal orders, directions and decisions.
- Working closely with the Chair and Vice Chair, Service Delivery of the Environmental Appeal Board, the Director of Supported Boards, the five Chairs of the supported Boards, and fifty tribunal members to ensure an efficient and effective appeal process, identifying emerging and critical issues for them and alerting processes to accommodate unusual or special requests or requirements.
- Providing training on the case management system, supervising and coordinating staff assisting on large, complex appeal files.
- Managing relationships with contracted recording secretaries, service providers and ensuring services are provided in accordance with the contracts.
- Carrying out logistical work and special projects, as assigned by the Chair; Vice Chair, Service Delivery; and/or Director of Supported Boards of the Environmental Appeal Board.

Responsible for increasing public trust and confidence that actions taken by the seven (7) tribunals are consistent with their respective legislated mandates, their directives, policies and guidelines by:

- Acting as primary contact for parties, legal representatives, panel members, and the public on appeals, and providing outstanding customer service to any person seeking support from the tribunals regarding appeals or tribunal procedures generally.
- Establishing and maintaining effective communication links with Ministries and agencies to ensure effective exchange of information and consistent, constructive appeal processes.
- Responding to a large volume of sensitive telephone and written enquiries from parties, legal representatives, and the public regarding appeals and appeal processes.
- Exercising high level of judgement in dealing with angry or upset individuals and ensuring appropriate release of information.
- Responding to a variety of routine and non-routine correspondence; seeking advice from the respective tribunal Chair and/or legal advice from the tribunal's legal counsel, where appropriate.
- Providing advice and critical information to the respective tribunal Chair, either directly, or through the relevant Executive Director, concerning case-specific issues or policy issues relevant to the particular tribunal's mandate.
- Speaking at full Board meetings regarding process issues and making recommendations.

Ongoing utilization and monitoring of the case management system to ensure each tribunal's mandate and timelines are met by:

- Supervising and coordinating maintenance of the case management system according to the applicable standards; making recommendations for improvements and implementing changes.
- Entering and tracking all activities pertaining to appeals, producing regular reports, and developing and preparing ad hoc reports on each of the tribunal's activities and decisions as requested.
- Co-ordinating workflow, monitoring and tracking deadlines for submissions due via the case management system; triaging contentious issues and following up with the applicable person or party in the event of problems/delays.
- Drafting letters to parties and determining if the parties' documents, submissions or information is incomplete or insufficient.
- Providing information to be utilized and updated in the case management system to ensure proper control and tracking of workflow for each case, and for use in the Annual Reports.
- Managing appeal file closures and vetting of file content/structure for archiving.
- Identifying the need for, and participating in, the development and implementation of new procedures.
- Providing technical input on special projects.

JOB REQUIREMENTS

Education and Related Experience

Career Group:

Administrative Services

Job Family:

Administrative Support

Job Stream:

Role:

Administration

Revised Date:

June 2018

- Degree in Law, a diploma or degree related to business, public administration or dispute resolution, OR an equivalent combination of relevant education, knowledge and experience.
- Three (3) years' experience interpreting and applying legislation, regulations and policy in complex situations.
- Demonstrated experience writing clear and concise letters, reports or decisions.
- Demonstrated experience using non-adversarial dispute resolution techniques to resolve disputes in sensitive and contentious circumstances.
- Experience providing culturally sensitive, timely, respectful, quality service to the public in a high-volume, fast-paced environment.
- Experience developing effective working relationships with key internal and external stakeholders.
- Preference given to applicants with experience applying the theories and principles of administrative law and rules of evidence.
- Demonstrated investigative experience, gathering and securing of relevant information.
- Demonstrated experience with word processing and database applications.
- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as required by the ministry (**Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position**).

BEHAVIOURAL COMPETENCIES

- **Concern for Order** reflects an underlying drive to reduce uncertainty in the surrounding environment. It is expressed in such forms as monitoring and checking work or information, insisting on clarity of roles and functions, etc.
- **Planning, Organizing and Co-ordinating** involves proactively planning, establishing priorities and allocating resources. It is expressed by developing and implementing increasingly complex plans. It also involves monitoring and adjusting work to accomplish goals and deliver to the organization's mandate.
- **Decisive Insight** combines the ability to draw on one's own experience, knowledge and training and effectively problem-solve increasingly difficult and complex situations. It involves breaking down problems, tracing implications and recognizing patterns and connections that are not obviously related. It translates into identifying underlying issues and making the best decisions at the most appropriate time. At higher levels, the parameters upon which to base the decision become increasingly complex and ambiguous and call upon novel ways to think through issues.
- **Analytical Thinking** is the ability to comprehend a situation by breaking it down into its components and identifying key or underlying complex issues. It implies the ability to systematically organize and compare the various aspects of a problem or situation, and determine cause-and-effect relationships ("if...then...") to resolve problems in a sound, decisive manner. Checks to ensure the validity or accuracy of all information.

- **Listening, Responding and Understanding:** the desire and ability to understand and respond effectively to other people from diverse backgrounds. It includes the ability to understand accurately and respond effectively to spoken and unspoken or partly expressed thoughts, feelings and concerns of others. People who demonstrate high levels of this competency show a deep and complex understanding of others, including cross-cultural sensitivity.
- **Information Seeking** is driven by a desire to know more about things, people or issues. It implies going beyond the questions that are routine or required in the job. It may include "digging" or pressing for exact information; resolution of discrepancies by asking a series of questions; or less-focused environmental "scanning" for potential opportunities or miscellaneous information that may be of future use.
- **Results Orientation** - is a concern for surpassing a standard of excellence. The standard may be one's own past performance (striving for improvement); an objective measure (achievement orientation); challenging goals that one has set; or even improving or surpassing what has already been done (continuous improvement). Thus, a unique accomplishment also indicates a Results Orientation.
- **Teamwork and Cooperation:** the ability to work cooperatively within diverse teams, work groups and across the organization to achieve group and organizational goals.



POSITION DESCRIPTION

ENVIRONMENTAL APPEAL BOARD/ FOREST APPEALS COMMISSION

POSITION TITLE:	Director, Finance and Operations	POSITION NUMBER(S): 00044969
DIVISION: (e.g. Division, Region, Department)	Environmental Appeal Board/ Forest Appeals Commission	
UNIT: (e.g. Branch, Area, District)		LOCATION: Victoria
SUPERVISOR'S TITLE:	Chair, Environmental Appeal Board, Forest Appeals Commission and Oil and Gas Appeal Tribunal	POSITION NUMBER:
SUPERVISOR'S CLASSIFICATION:	OIC, Tribunal Level 4 Chair	PHONE NUMBER: 387-9336
FOR AGENCY USE ONLY		NOC CODE:
APPROVED CLASSIFICATION:		CLASS CODE:
ENTERED BY:		PHONE NUMBER

PROGRAM

The Environmental Appeal Board and Forest Appeals Commission are independent, quasi-judicial, adjudicative tribunals that hear appeals and make decisions under several provincial Acts. The tribunals are supported by one administrative office, which provides appeal registry services, legal advice, research support, systems support, financial and administrative services, training and communications strategies throughout the province. The Office of the Environmental Appeal Board and Forest Appeals Commission administers six additional boards for multiple ministries including: Health Professions Review Board, Hospital Appeal Board, Community Care and Assisted Living Appeal Board, Financial Services Tribunal, Industry Training Appeal Board and Oil and Gas Appeal Tribunal. These boards are operated on a fully cost recovered basis, recovered from various ministries on a quarterly basis.

PURPOSE OF POSITION

The Director reports to the Chair and is accountable for the provision of sound executive advice and guidance on a wide range of operational issues including: financial operations, human resources, operations management, and information technology, as required by the applicable legislation. The effective operation of the Environmental Appeal Board and Forest Appeals Commission and the Health Boards is dependent on the functions of this position. The Director assumes responsibility for operations during the Chair's absence.

NATURE OF WORK AND POSITION LINKS

- **Chairs and Senior Management Team** – to provide advice and direction for financial operations, human resources, administrative management, information technology, etc.
- **Central agency officials (e.g. MTIC, Treasury Board Staff, Office of the Comptroller General and Office of the Auditor General)** – to ensure the tribunals comply with approved financial policies, directives and standards, Government legislation, policies and procedures and to provide recommendations or input for changes to policy directives. To remain current with legislation and government policies and procedures and finance, administration, and records management issues.
- **Board Resourcing and Development Office, Premier's Office, Cabinet Operations, Legislative Counsel** - to manage the OIC appointment process.
- **Ministry of Health, Ministry of Finance, Ministry of Energy and Mines, Ministry of Jobs, Tourism and Skills Training (Ministers' and Deputy Ministers' offices)** - OIC appointments, budget and service plans and tribunal annual reports.
- **Ministry of Health** - to provide the Chairs of the Health Boards with financial and administrative advice and guidance and ensure resources are available for provision of appeal and hearing management. To provide the appeal/hearing tracking and direct cost reporting for cost-recoveries to the Ministry.
- **Queen's Printer, Purchasing Services and contracted printers** – to manage the procurement process and publication of Annual reports.
- **BC Buildings Corporation, MTIC** – to liaise with regards to office space, leases, and other physical resource issues.

- **Staff and Public Service Agency** - to provide effective human resource management.
- **Subordinates** – to provide direction regarding application of financial, human resource, administrative and information policies and activities; and to provide advice and direction on hearing operations, reception, payroll, leave management, records administration and assets/facilities.
- **Tribunal Members** - to provide direction for training, hearing fees and expenditures and OIC appointment process.
- **Outside agencies** related to legal administration, hearings, and meetings.

The Environmental Appeal Board and Forest Appeals Commission are independent, quasi-judicial, adjudicative tribunals that hear appeals and make decisions under several provincial Acts and the tribunals' decisions can be appealed to the Courts. Hearings for the tribunals are held and organized throughout the province. Tribunal Members are appointed by the Lieutenant Governor through Order-in-Council and membership is drawn from across the Province and represents diverse legal, business and technical expertise. The tribunals both produce Annual Reports, as legislated. The tribunals are supported by one administrative office, which provides registry services, legal advice, research support, systems support, financial and administrative services, training and communications strategies throughout the province.

The tribunals' office has its own Vote. The Director acts as Senior Financial Officer and makes decisions that impact the operation of the tribunals. The Director deals with Treasury Board on budgetary issues. By applying the policies and procedures of Government, the Director establishes and manages financial and other management systems and procedures in accordance with Treasury Board and other legislative requirements for management control and public service.

The Office of the Environmental Appeal Board and Forest Appeals Commission administers the Hospital Appeal Board and the Community Care and Assisted Living Appeal Board for the Ministry of Health Services. The Hospital Appeal Board hears appeals filed by medical or dental practitioners regarding decisions of a hospital's board of management that modifies, refuses, suspends, revokes or fails to renew a permit to practice medicine or dentistry in a hospital; or the failure or refusal of a hospital's board of management to consider and decide on an application for a permit. The Community Care and Assisted Living Appeal Board hears appeals regarding the licensing of community care facilities, the registration of assisted living residences and the licensing of early childhood educators. Hearings for the tribunals may be held throughout the province.

The Director, Finance and Operations is responsible for developing and managing the financial and administrative functions of the tribunals; providing the Chair with advice and recommendations on the financial, human resource, technical and administrative implications of operational issues.

The Director exercises functional authority with respect to interpretation and application of Government Financial, Personnel and General Management Operating Policies and Procedures. The Director is the principal contact for financial and administrative matters when working with Treasury Board, BCBC, Ministry of Finance, Ministry of Energy and Mines, Ministry of Health, QP, MTIC, PSA, OCG and Auditor General. It is the Director's responsibility to ensure an excellent working relationship in these areas.

Decisions of the Director impact the operation of the tribunals. Errors in judgment and unsound advice could have operational consequences such as budget shortfalls; development of human resource problems; long-term legal implications arising from deficiencies in contracts or inaccurate statistics being provided to the members, government and the general public and insufficient resources/expertise to conduct hearings which will significantly impact appeals, affecting industry, other stakeholders and the economy, particularly where appeals are dealing with stop work orders, fines, cancelled or amended permits and enforced changes to current practices.

SPECIFIC ACCOUNTABILITIES/DELIVERABLES

1. Provides sound financial and administrative advice to the Chair regarding the management of tribunal funding and operations and ensures compliance with all applicable statutes, regulations and policies for the management of government organizations. The Director assumes responsibility for financial and administrative operations during the Chair's absence.

2. Makes recommendations for changes and improvements by reviewing current practices and policies, identifying weaknesses, researching and proposing improvement options and implementing and managing changes, both internally and to central agencies.
3. Leads the budget process and develops and coordinates the tribunals' budget and financial plans. Monitors and forecasts the tribunals' expenditures to ensure compliance with appropriations and central agency requirements and develops rationale for budget variances and makes changes as a result of monitoring. The Director is the principal contact and deals directly with Treasury Board and OCG. Exercises Expense Authority at Category 3 (\$250K).
4. Initiates and administers contracted services including tendering, awarding, monitoring, reporting and paying for such services according to Government and Tribunal policies and procedures. Manages contracted resources.
5. Manages the tribunals OIC appointment process working with the Chairs to secure seasoned, professional expertise that ensures the mandate of the tribunals are met and that appeal hearings are held in a timely manner with expert panels. Organizes the orientation and training of tribunal members.
6. Provides advice and direction to the OIC's in accordance with tribunal and Government policy. The Director is instrumental in reviewing and providing options for changes to OIC policy/directives both internally to the central agencies.
7. Prepares financial and statistical content for the legislated Forest Appeals Commission Annual Report and Environmental Appeal Board Annual Report and manages the production and distribution to the Legislative Assembly.
8. Oversees the design, implementation, integration, security, content, and administration of the tribunals case management, website and computers systems.
9. Directs the provision of facilities management, lease negotiations, telecommunications and hearing room facilities.
10. Manages the organization, staffing, training & performance standards of the tribunal office and ensures effective human resource management.
11. Provides leadership to support staff by identifying needs and objectives, organizing staff to respond appropriately to the needs of the tribunals and their members, establishing performance expectations. The Director ensures that all staff are fully trained in order to effectively service the goals and objectives as set out in the office mandate.
12. Oversees the analysis of requests for information under FOI legislation.
13. Contributes to the effective management of the Tribunals and the office as a member of the Senior Management Team and represents the tribunals on various government management and administrative initiatives.
14. Provides the Chairs with advice and guidance specific to the provision of administrative and financial operations, including the OIC appointment process. Provides the supported board Ministries with monthly reporting of all direct costs associated with the Boards appeals and hearings and ascertains the cost recovery.

JOB REQUIREMENTS

- Professional accounting designation (CPA) or equivalent preferred.
- Experience in the management of financial resources and budget development.
- Experience in the leadership and supervision of staff.
- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as

required by the ministry (**Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position**).

BEHAVIOURAL COMPETENCIES

- **Business Acumen** is the ability to understand the business implications of decisions and the ability to strive to improve organizational performance. It requires an awareness of business issues, processes and outcomes as they impact the client's and the organization's business needs.
- **Improving Operations** is the ability and motivation to apply one's knowledge and past experience for improving upon current modes of operation within the Ministry. This behaviour ranges from adapting widely used approaches to developing entirely new value-added solutions.
- **Managing Organizational Resources** is the ability to understand and effectively manage organizational resources (e.g. People, materials, assets, budgets). This is demonstrated through measurement, planning and control of resources to maximize results. It requires an evaluation of qualitative (e.g., client satisfaction) and quantitative (e.g., service costs) needs.
- **Planning, Organizing and Co-coordinating** involves proactively planning, establishing priorities and allocating resources. It is expressed by developing and implementing increasingly complex plans. It also involves monitoring and adjusting work to accomplish goals and deliver to the organization's mandate.
- **Results Orientation** is a concern for surpassing a standard of excellence. The standard may be one's own past performance (striving for improvement); an objective measure (achievement orientation); challenging goals that one has set; or even improving or surpassing what has already been done (continuous improvement). Thus, a unique accomplishment also indicates a Results Orientation.

For more information about behavioural interviews, competency definitions, and to watch interview videos please visit: [Competencies for Interviews & Hiring](#)

FINANCIAL RESPONSIBILITY

Budget: \$2 million	FTEs: 13
Expense Authority: Category 3 (\$250K)	OIC's: approx. 85

DIRECT SUPERVISION (i.e. responsibility for signing the employee appraisal form)

Role	# of Regular FTE's:	# of Auxiliary FTE's
Support Staff	3	As and when required

PREPARED BY

NAME: Vivia DeWolfe	DATE: June 8, 2016	
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EXCLUDED DIRECTOR AUTHORIZATION

I confirm that: 1. the accountabilities/deliverables were assigned to this position effective December 1, 2004: 2. the information in this position description reflects the actual work performed. 3. a copy has/will be provided to the incumbent(s)		
NAME: Alan Andison	SIGNATURE:	DATE:

ORGANIZATION CHART

Chair, Environmental Appeal Board/Forest Appeals Commission

Director, Finance and Operations
Finance and Web Administrator
Intake Administrator
Administrative Assistant

TITLE: DIRECTOR, SUPPORTED APPEAL BOARDS**CLASSIFICATION: BAND 4****MINISTRY: ATTORNEY GENERAL****BRANCH: ENVIRONMENTAL APPEAL BOARD****SUPERVISORS TITLE: CHAIR, ENVIRONMENTAL APPEAL BOARD****JOB OVERVIEW**

The Director, Supported Appeal Boards, reports administratively to the Chair of the Environmental Appeal Board (EAB), and has a functional reporting relationship to individual chairs of four independent, quasi-judicial appeal bodies (the "Tribunals") clustered in the EAB Appeals Office: the Community Care and Assisted Living Appeal Board, the Hospital Appeal Board, the Financial Services Tribunal, and the Skilled Trades BC Appeal Board.

Principal responsibilities involve administrative and registry leadership for the Tribunals. The Director operates with a high degree of autonomy and responsibility to support the Tribunals' chairs and members on all aspects of their obligations under the applicable legislation. The position has a broad mandate and diverse responsibilities. The Director is the full-time, in-office liaison for the part-time, remote chairs. The Director assists with planning, developing, implementing and evaluating legal strategies (including reviewing member decisions and providing feedback, giving instructions for judicial review, and assisting with legislative consultation); policy and procedures; resources and aids for staff, members, and the public; the use of dispute resolution in the Tribunals' processes; research; case management (including running pre-hearing conferences); appeal metrics definition and tracking; annual reporting; budgeting; freedom of information requests and the protection of privacy; and acting as a qualified receiver for a variety of goods and services. The Director also assists with the recruitment of tribunal members, and manages the process for recommending appointments and reappointments to Cabinet. The Director must also engage in and be accountable for risk management in the handling of appeals and in leading the development, implementation, and monitoring of multi-faceted policies and programs across all of the Tribunals, impacting all aspects of appeal management and service delivery, focused by larger-scale government priorities (e.g., reconciliation).

The Director assigns work to the EAB's two Case Managers, and monitors their completion of, or sub-delegation of, appeal management work. may also be appointed as a member of the Tribunals, and may be required to issue a range of preliminary and merits-based decisions, as delegated by the Tribunals' chairs. As such, the Director must be eligible to be appointed by Order in Council or Ministerial Order, as a government representative, to serve as a member of the Community Care and Assisted Living Appeal Board, Hospital Appeal Board, Financial Services Tribunal, and Skilled Trades BC Appeal Board.

Secondary responsibilities include providing back-up for four other appeal bodies in the cluster: the Environmental Appeal Board, Forest Appeals Commission, Health Professions Review Board, and Oil and Gas Appeal Tribunal. Tasks in support of these appeal bodies can include coverage for case management, and consulting on the planning, development, implementation and evaluation of cluster-wide policy and procedures, and research. The Director is also a designated information officer for the cluster of eight appeal bodies, designated under the Public Interest Disclosure Act.

The nature of the work is diverse and complex. The work requires management of an extensive portfolio of distinct multi-facets operations, impacting a range of regulatory decision-makers. This requires mastery of numerous pieces of legislation in a variety of subject areas, sound analysis, expeditious decision-making, efficient case planning and monitoring, and balancing competing priorities. The Director is expected to have broad and in-depth knowledge and skills on administrative law and natural justice, consensual dispute resolution; health care professions and administration; community care facilities licensing; financial services regulation and related legislation; skilled trades certification and administration; policy development; issues management; decision-making; and legal writing. The Director should be skilled in identifying, organizing and facilitating professional development (including organizing general meetings), coaching and peer support for tribunal members.

As the primary contact and strategic liaison for parties, regulatory agencies, governmental stakeholders, legal representatives, public (including the media) and panel members on appeals, the Director provides an outstanding level of customer service. Outstanding written and oral communication skills are required.

ACCOUNTABILITIES

- Plans, develops, implements, directs and evaluates the full range of best management practices, policy and guidelines, financial controls, research, records and information management and reporting, performance standards, reconciliation efforts, and support services to each of the Tribunals
- Provides technical and strategic leadership to chairs and members in the application and interpretation of legislation, regulations and/or policies in a quasi-judicial appellate context
- Provides detailed procedural information, advice and assistance to all parties to an appeal which includes lawyers, regulators, and unrepresented lay people who may be angry, confused or upset in dealing with situations where their livelihood is at stake
- Provides strategic, business and operational direction, leadership and planning for the tribunals
- Provides strategic and operational advice and expertise in the anticipation, identification, and response to critical problems and issues affecting the tribunals
- Manages statistical tracking and reporting for the supported tribunals; analyzes and summarizes trends for the chairs; identifies data reporting needs for use in quality control, trends and issues identification
- Acts as primary liaison between tribunal chairs and members/staff and between the public and the tribunals
- Prioritizes cases and manages the organization and scheduling of all aspects of appeals for the supported tribunals
- Provides legal and policy support to the chairs and members; resolves legal issues internally and instructs outside legal counsel where necessary; identifies issues requiring a legal opinion, prepares request for legal opinions, liaises with legal counsel and interprets and applies legal opinions; responds to judicial review applications and instructs legal counsel as required, and assists chairs with legislative consultations
- Assists tribunal chairs in developing and implementing procedural rules and practices for hearings and pre-hearing administration to ensure fair, timely and economical hearings
- Exercises delegated authority to conduct pre-hearing case management conferences and make pre-hearing procedural and dispute resolution decisions
- Assists panels in drafting and editing decisions, providing policy and editorial advice to the decision-making process; reviews decisions for quality assurance, consistency and identification of any legal issues and manages the release and public posting of decisions
- Responds to complaints and concerns raised by stakeholders regarding appeal processes
- Responsible for recruitment and developing selection criteria for members and for ensuring members appointed have adequate orientation and professional development opportunities

- Advises tribunal chairs on situations where member conflicts of interest may exist and recommends appropriate courses of action
- Assists chairs to ensure that Tribunals operate within their allocated budgets, and acts as qualified receiver for the Tribunals
- Establishes and manages relationships with senior stakeholders in the responsible ministries; the host ministry; the AG Dispute Resolution Office; Ombudsman's Office and the Office of the Information and Privacy Commissioner; regulatory and other external parties, to address communication issues, business process re-engineering opportunities, technology standards, linkages, policy and legislative initiatives and procedural matters
- Develops and implements educational strategies for the public and participants regarding hearing and dispute resolution processes
- Undertakes public speaking engagements for public or private organizations as requested in order to provide information about the tribunals; monitors, reviews and updates website and other public information
- Responds to complex or sensitive verbal and written enquiries
- Responsible for annual report development and oversight
- Responds to requests and issues under the *Freedom of Information and Protection of Privacy Act* and the *Public Information Disclosure Act*
- Provides media relations and liaison for the tribunals
- May supervise staff including assignment of work, development and evaluation of performance plans, approval of leave, response to grievances and initiation of discipline processes
- If appointed as a member of the Tribunals, may complete a range of preliminary and substantive decisions as delegated by the respective chairs

JOB REQUIREMENTS

- A combination of a law degree and a minimum of 5 years current management experience in a tribunal environment, or an equivalent combination of education and related experience
- Experience in the administrative justice sector working with and applying legislation, regulations and policy and in-depth applied knowledge of the concepts and application of administrative fairness, due process and natural justice with a view to determining an appropriate course of action in diverse situations
- Experience in providing legal advice in an administrative justice context
- Experience in setting priorities and making decisions between competing needs in sensitive and contentious circumstances and ability to effectively manage cases from start to finish
- Experience developing, evaluating and implementing operational policy and procedures, including through advancing reconciliation
- Experience in management of multi-disciplinary staff and leading teams is an asset
- Demonstrated excellence in interpersonal, organizational and consultative skills are required
- Ability to establish and maintain effective working relationships and provide procedural guidance to a diverse constituency appearing before the tribunals
- Ability to exercise discretion and creativity in the approach to problems and people
- Confidence, good judgement, excellent communication skills, tact, discretion and respect for confidentiality are essential to the position

- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as required by the ministry

LEADERSHIP COMPETENCIES

- **Vision and Goal Setting** involves knowledge and skills in establishing official and operative goals for the organization/units and to establish a system of measuring effectiveness of goal attainment.
- **Creating and Managing Change** involves knowledge and skills to manage in the organization through setting direction and urgency, building a coalition of support, communicating widely, handling resistance to change and facilitating implementation of successful change actions.
- **Solving Problems Creatively** involves knowledge and skills in fostering creative problem solving in the organization through critical reflection, problem analysis, risk assessment and rewarding innovation.
- **Building Strategic Alliances** involves knowledge and skills to engage in internal and external stakeholder analysis and to negotiate agreements and alliances based on a full understanding of power and politics.
- **Executive Presence** involves knowledge and skills in influencing others and having an observable impact through personal credibility, leadership, confidence, and an understanding of other people's perspectives and interests.
- **Negotiating/Conflict management** involves knowledge and skills to engage in two-party/multi-party negotiations and to facilitate third-party intervention into conflict situations, building consensus, recognizing and managing difficult relationships, managing conflict by focusing on underlying interests and dealing with issues rather than personalities
- **Communicating Effectively** involves good presentation skills (verbal and written), careful listening and problem framing ; listens carefully to understand key points and major concerns; frames issues so difference audiences can understand them
- **Handling Crises** involves preventing crisis situations by paying attention to warning signs and making decisions and taking action to deal with problems that arise
- **Promoting Empowerment** involves knowledge and skills in using processes such as delegation and information sharing to enhance subordinate ownership and empowerment over their task and performance.

TITLE: DIRECTOR, SUPPORTED APPEAL BOARDS**CLASSIFICATION: BAND 4****MINISTRY: ATTORNEY GENERAL****BRANCH: ENVIRONMENTAL APPEAL BOARD****SUPERVISORS TITLE: CHAIR, ENVIRONMENTAL APPEAL BOARD****JOB OVERVIEW**

The Director, Supported Appeal Boards, reports administratively to the Chair of the Environmental Appeal Board (EAB), and has a functional reporting relationship to each of the individual chairs of the independent, quasi-judicial appeal boards and tribunals ("tribunals") clustered in the EAB Appeals Office. Primary responsibility encompasses responsibility to the chairs of the Hospital Appeal Board, Financial Services Tribunal, Community Care and Assisted Living Appeal Tribunal and the Industry Training Appeal Board. Secondary responsibilities include back-up for the other tribunals in the cluster. As the technical expert, the Director operates with a high degree of autonomy and responsibility to provide support to the tribunal chairs and members on all aspects of their obligations under the applicable legislation. The position has a broad mandate and diverse responsibilities in support of the tribunals, including planning, development, implementation and evaluation of a full range of legal; policy; dispute resolution; research; tracking and reporting; case management; and financial and human resources needed to provide the necessary infrastructure and management of these appellate tribunals to support achievement of their various mandates and objectives under their respective governing statutes. The nature of the work is diverse and complex, necessitating management of a diverse and demanding caseload requiring mastery of numerous pieces of legislation in a variety of subject areas, sound analysis, expeditious decision-making, efficient case planning and monitoring, and balancing competing priorities among up to eight different tribunals. Performing multiple roles, incumbents are expected to bring a diverse body of knowledge and skills to the role in areas such as: administrative law and natural justice; consensual dispute resolution; health care professions and administration; community care facilities licensing; industry training and financial services regulation and related legislation; environmental concerns; policy development; issues management; decision-making and writing; providing professional development, coaching and peer support for tribunal members; Freedom of Information and Protection of Privacy; media relations; statistical tracking and reporting; and conflict of interest and bias. As the primary contact for parties, regulatory agencies, legal representatives, public and panel members on appeals the Director provides an outstanding level of customer service.

ACCOUNTABILITIES

- Plans, develops, implements, directs and evaluates the full range of best management practices, policy and guidelines, legal issues, dispute resolution, financial controls, research, records and information management and reporting, performance standards, and support services to each of the tribunals
- Provides technical and strategic leadership to chairs and members in the application and interpretation of legislation, regulations and/or policies in a quasi-judicial appellate context
- Provides detailed procedural information, advice and assistance to all parties to an appeal which includes lawyers, regulators, and unrepresented lay people who may be angry, confused or upset in dealing with situations where their livelihood is at stake
- Provides strategic, business and operational direction, leadership and planning for the tribunals
- Provides strategic and operational advice and expertise in the anticipation, identification, and response to critical problems and issues affecting the tribunals

- Manages statistical tracking and reporting for the supported tribunals; analyzes and summarizes trends for the chairs; identifies data reporting needs for use in quality control, trends and issues identification
- Acts as primary liaison between tribunal chairs and members and between the public and the tribunals
- Prioritizes cases and manages the organization and scheduling of all aspects of appeals for the supported tribunals
- Provides legal and policy support to the chairs and members; resolves legal issues internally and instructs outside legal counsel where necessary; identifies issues requiring a legal opinion, prepares request for legal opinions, liaises with legal counsel and interprets and applies legal opinions; responds to judicial review applications and instructs legal counsel as required
- Assists tribunal chairs in developing and implementing procedural rules and practices for hearings and pre-hearing administration to ensure fair, timely and economical hearings
- Exercises delegated authority to conduct pre-hearing case management conferences and make pre-hearing procedural and dispute resolution decisions
- Assists panels in drafting and editing decisions, providing policy and editorial advice to the decision-making process; reviews decisions for quality assurance, consistency and identification of any legal issues and manages the release and public posting of decisions
- Responds to complaints and concerns raised by stakeholders regarding appeal processes
- Responsible for recruitment and developing selection criteria for members and for ensuring members appointed have adequate orientation and professional development opportunities
- Advises tribunal chairs on situations where member conflicts of interest may exist and recommends appropriate courses of action
- Ensures that tribunals operate within their allocated budgets
- Establishes and manages relationships with senior stakeholders in the responsible ministries; the host ministry; the AG Dispute Resolution Office; Ombudsman's Office and the Office of the Information and Privacy Commissioner; regulatory and other external parties, to address communication issues, business process re-engineering opportunities, technology standards, linkages, policy and legislative initiatives and procedural matters
- Develops and implements educational strategies for the public and participants regarding hearing and dispute resolution processes
- Undertakes public speaking engagements for public or private organizations as requested in order to provide information about the tribunals; monitors, reviews and updates website and other public information
- Responds to complex or sensitive verbal and written enquiries
- Responsible for annual report development and oversight
- Responds to requests and issues under the *Freedom of Information and Protection of Privacy Act*
- Provides media relations and liaison for the tribunals
- May supervise staff including assignment of work, development and evaluation of performance plans, approval of leave, response to grievances and initiation of discipline processes.

JOB REQUIREMENTS

- A combination of a law degree and a minimum of 5 years current management experience in a tribunal environment, or an equivalent combination of education and related experience
- Experience in the administrative justice sector working with and applying legislation, regulations and policy and in-depth applied knowledge of the concepts and application of administrative fairness, due process and natural justice with a view to determining an appropriate course of action in diverse situations

- Experience in providing legal advice in an administrative justice context
- Experience in setting priorities and making decisions between competing needs in sensitive and contentious circumstances and ability to effectively manage cases from start to finish
- Experience developing, evaluating and implementing operational policy and procedures
- Experience in management of multi-disciplinary staff and leading teams is an asset
- Demonstrated excellence in interpersonal, organizational and consultative skills are required
- Ability to establish and maintain effective working relationships and provide procedural guidance to a diverse constituency appearing before the tribunals
- Ability to exercise discretion and creativity in the approach to problems and people
- Confidence, good judgement, excellent communication skills, tact, discretion and respect for confidentiality are essential to the position
- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as required by the ministry

LEADERSHIP COMPETENCIES

- **Vision and Goal Setting** involves knowledge and skills in establishing official and operative goals for the organization/units and to establish a system of measuring effectiveness of goal attainment.
- **Creating and Managing Change** involves knowledge and skills to manage in the organization through setting direction and urgency, building a coalition of support, communicating widely, handling resistance to change and facilitating implementation of successful change actions.
- **Solving Problems Creatively** involves knowledge and skills in fostering creative problem solving in the organization through critical reflection, problem analysis, risk assessment and rewarding innovation.
- **Building Strategic Alliances** involves knowledge and skills to engage in internal and external stakeholder analysis and to negotiate agreements and alliances based on a full understanding of power and politics.
- **Executive Presence** involves knowledge and skills in influencing others and having an observable impact through personal credibility, leadership, confidence, and an understanding of other people's perspectives and interests.
- **Negotiating/Conflict management** involves knowledge and skills to engage in two-party/multi-party negotiations and to facilitate third-party intervention into conflict situations, building consensus, recognizing and managing difficult relationships, managing conflict by focusing on underlying interests and dealing with issues rather than personalities
- **Communicating Effectively** involves good presentation skills (verbal and written), careful listening and problem framing ; listens carefully to understand key points and major concerns; frames issues so difference audiences can understand them
- **Handling Crises** involves preventing crisis situations by paying attention to warning signs and making decisions and taking action to deal with problems that arise
- **Promoting Empowerment** involves knowledge and skills in using processes such as delegation and information sharing to enhance subordinate ownership and empowerment over their task and performance.

TITLE: INTAKE ADMINISTRATOR**CLASSIFICATION: CLERK 11**

The Environmental Appeal Board, Forest Appeals Commission, and Oil and Gas Appeal Tribunal are independent, quasi-judicial tribunals, operating at arms-length from government to hear and decide appeals from administrative decisions made by government officials under several statutes. One administrative office supports the tribunals by providing appeal registry services, research support, systems support, financial/administrative services, and a contact point for communication with the public. Additionally the office provides administrative support to five other boards: the Community Care and Assisted Living Appeal Board, the Financial Services Tribunal, the Health Professions Review Board, the Hospital Appeal Board, and the Industry Training Appeal Board.

JOB OVERVIEW

This position reports to the Vice Chair, Service Delivery, and works closely with the Case Managers and the Director, Finance and Operations. Responsibilities include receiving, reviewing and validating incoming appeal documents; ensuring appeal tracking and administrative records are kept up-to-date; providing administrative and registry support; and serving as a point of contact with the public.

ACCOUNTABILITIES**Required:**

- Perform front counter service duties including receiving documents, mail, courier deliveries, answer questions from the public, parties, counsel, and representatives about appeal procedure and options for completing notices of appeal with professional and trauma informed approach.
- Handle in-person, telephone and email inquiries from the public, parties, and representatives while maintaining a professional, trauma informed approach.
- Receive appeal documents from clients. Review supporting information to ensure records are complete and distributed correctly, as described in the relevant legislation, regulations and policies. Initiates and completes appeal registration in line with established procedures.
- Process, scan and/or forward, and index incoming mail and documents, and assign documents for further processing. Coordinate outgoing mail and courier deliveries to parties and members, coordinate and disseminate documents and messages from Chair, Vice Chair Service Delivery or Director of supported Boards throughout the organization.
- In consultation with the Vice Chair, Service Delivery, may refers clients to other programs or services if appeal information is incomplete.

- Contact clients and/or other stakeholders to clarify conflicting/missing information required to start appeals.
- Enter case information in electronic systems, including databases, finance systems and spreadsheets, and maintains case files in appeal information management system.
- Create physical appeal folder and maintain filing cabinet in line with established procedure.
- Seeks guidance from Vice Chair Service Delivery or other senior program staff on unusual matters. Escalates cases to Vice Chair Service Delivery or other senior program staff when matters are outside established criteria or where issues are contentious.
- Provides information to staff, the public, and stakeholder agencies regarding program policies and procedures.
- Proofreads, types and/or formats correspondence, appeal documents, investigation and inspection reports from drafts or written notes.
- Calculates fee and/or refunds. Deposits filing fees in accordance with standard policy and procedure.
- Coordinate meetings, hearings, mediations and appointments and makes logistical arrangements, such as booking meeting rooms, hearing facilities, travel, and accommodation.
- Maintains a records management system including the disposal, archiving, retrieving and security of electronic and hardcopy files.
- Organize and distribute appeal-related documents for case managers during appeal building process and by legal counsel for use in judicial review proceedings.
- Assist case managers in coordinating and monitoring live streaming of electronic hearings.
- Provides support to tribunal members related to information technology and electronic access to email, videoconferencing software, and to electronic drives and documents.
- Other duties as required.

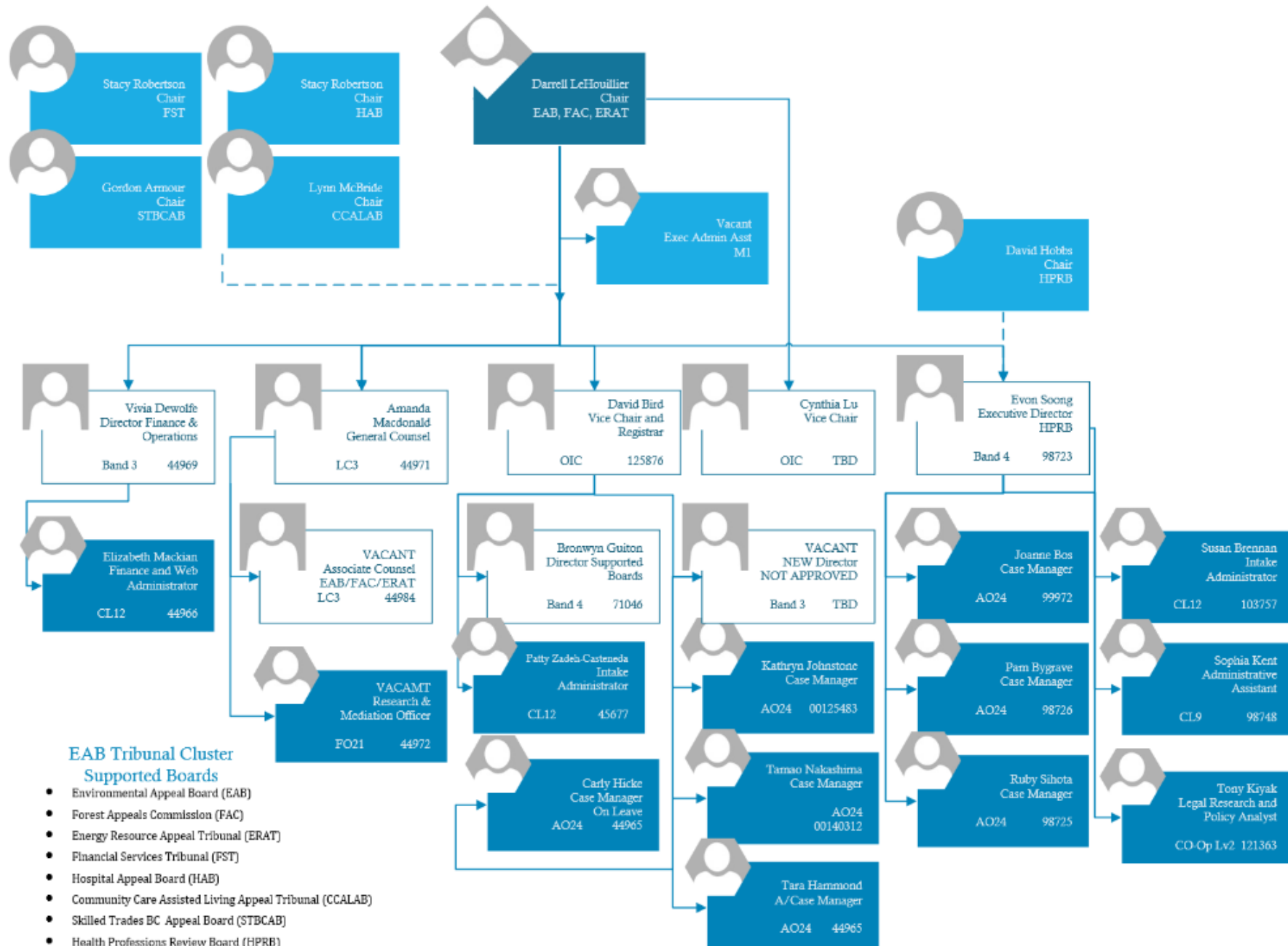
JOB REQUIREMENTS

- Post-secondary degree or diploma in a related discipline, or an equivalent combination of three years' experience in an administrative body, court services, or other adjudicative or regulatory environment.
- Demonstrated experience with word processing, database, and case management applications, as well as familiarity with both Microsoft and Apple operating systems (including the ability to map drives).
- Minimum one year experience providing client service in a high pressure and/or adversarial environment.
- The ability to communicate complicated adjudicative procedures to laypeople in a way that is professional, and trauma informed.
- Successful completion of security screening requirements of the BC Public Service, which may include a criminal records check, and/or Criminal Records Review Act (CRRA) check, and/or enhanced security screening checks as required by the ministry **(Note: It is important that you read the job posting carefully to understand the specific security screening requirements pertaining to the position).**

BEHAVIOURAL COMPETENCIES

- **Concern for Order** reflects an underlying drive to reduce uncertainty in the surrounding environment. It is expressed as monitoring and checking work or information, insisting on clarity of roles and functions, etc.
- **Cultural Agility** is the ability to work respectfully, knowledgeably and effectively with Indigenous people. It is noticing and readily adapting to cultural uniqueness in order to create a sense of safety for all. It is openness to unfamiliar experiences, transforming feelings of nervousness or anxiety into curiosity and appreciation. It is examining one's own culture and worldview and the culture of the BC Public Service, and to notice their commonalities and distinctions with Indigenous cultures and worldviews. It is recognition of the ways that personal and professional values may conflict or align with those of Indigenous people. It is the capacity to relate to or allow for differing cultural perspectives and being willing to experience a personal shift in perspective. (Mandatory for all public servants)
- **Planning, Organizing and Coordinating** involves proactively planning, establishing priorities and allocating resources. It is expressed by developing and implementing increasingly complex plans. It also involves monitoring and adjusting work to accomplish goals and deliver to the organization's mandate.
- **Service Orientation** implies a desire to identify and serve customers/clients, who may include the public, colleagues, partners (e.g. educational institutes, non-government organizations, etc.), co-workers, peers, branches, ministries/agencies and other government organizations. It means focusing one's efforts on discovering and meeting the needs of the customer/client.
- **Teamwork and Cooperation** is the ability to work co-operatively within diverse teams, work groups and across the organization to achieve group and organizational goals.

EAB Tribunal Cluster Organizational Chart



MODIFICATION AGREEMENT

BETWEEN

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by
ENVIRONMENTAL APPEAL BOARD
(the "Province", "we", "us", or "our", as applicable)

AND

OLDENBURGER CONSULTING
(the "Contractor" "you" or "your" as applicable)

BACKGROUND

A. The parties entered into an agreement dated January 12, 2024, a copy of which is attached as Exhibit 1 (the "Agreement").

B. The parties have agreed to modify the Agreement.

AGREEMENT

The parties agree as follows:

(1) The term of the agreement is extended to end on March 31, 2025

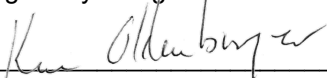
(2) In all other respects, the Agreement is confirmed.

SIGNED AND DELIVERED on the 4th day of April, 2024 on behalf of the Province by its duly authorized representative:

Signature 

Print Name Darrell Le Houillier

SIGNED AND DELIVERED on the 4th day of April, 2024 by or on behalf of the Contractor (or by its authorized signatory or signatories if the Contractor is a corporation):

Signature 

Print Name Ken Oldenburger

Ken

Oldenburger

Digitally signed by
Ken Oldenburger

Date: 2024.04.12
15:42:52 -07'00'

GENERAL SERVICE AGREEMENT



For Administrative Purposes Only

Ministry Contract No.: _AT24EAB15FDA117_
Requisition No.: _117_
Solicitation No.(if applicable):
Commodity Code:

Contractor Information

Supplier Name: _Oldenburger Consulting_
Supplier No.: _ 183733 / 001_
Telephone No.: _(250) 889-1992_
E-mail Address: _koconsult@shaw.ca_
Website:

Financial Information

Client: _105_
Responsibility Centre: _15FDA_
Service Line: _10565_
STOB: _6001_
Project: _1500000_

Template version: September 16, 2022
Corporate Contract Template issued by
OCG under TB Directive 1/23

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SCHEDULE A – SERVICES

- Part 1 - Term**
- Part 2 - Services**
- Part 3 - Related Documentation**
- Part 4 - Key Personnel**

SCHEDULE B – FEES AND EXPENSES

- Part 1 - Maximum Amount Payable**
- Part 2 - Fees**
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- Part 5 - Payments Due**

SCHEDULE C – APPROVED SUBCONTRACTOR(S)

SCHEDULE D – INSURANCE

SCHEDULE E – PRIVACY PROTECTION SCHEDULE

SCHEDULE F – ADDITIONAL TERMS

SCHEDULE G – SECURITY SCHEDULE

SCHEDULE H – TAX VERIFICATION

THIS AGREEMENT is dated for reference the 4th day of January, 2024.

BETWEEN:

@OLDENBURGER CONSULTING (the "Contractor") with the following specified address and fax number:
@870 OLD ESQUIMALT ROAD, VICTORIA BC
@V9A 4X2

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, as represented by the ENVIRONMENTAL APPEAL BOARD (the "Province") with the following specified address and fax number:
@4TH FL., 747 FORT STREET, VICTORIA BC
@V8W 3E9
@(250) 356-9923

The Province wishes to retain the Contractor to provide the services specified in Schedule A and, in consideration for the remuneration set out in Schedule B, the Contractor has agreed to provide those services, on the terms and conditions set out in this Agreement.

As a result, the Province and the Contractor agree as follows:

1 DEFINITIONS

General

1.1 In this Agreement, unless the context otherwise requires:

- (a) "Business Day" means a day, other than a Saturday or Sunday, on which Provincial government offices are open for normal business in British Columbia;
- (b) "Incorporated Material" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- (c) "Material" means the Produced Material and the Received Material;
- (d) "Produced Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced or provided by the Contractor or a Subcontractor and includes the Incorporated Material;
- (e) "Received Material" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from the Province or any other person;
- (f) "Services" means the services described in Part 2 of Schedule A;
- (g) "Subcontractor" means a person described in paragraph (a) or (b) of section 13.4; and
- (h) "Term" means the term of the Agreement described in Part 1 of Schedule A subject to that term ending earlier in accordance with this Agreement.

Meaning of "record"

1.2 The definition of "record" in the *Interpretation Act* is incorporated into this Agreement and "records" will bear a corresponding meaning.

2 SERVICES

Provision of services

2.1 The Contractor must provide the Services in accordance with this Agreement.

Term

- 2.2 Regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.

Supply of various items

- 2.3 Unless the parties otherwise agree in writing, the Contractor must supply and pay for all labour, materials, equipment, tools, facilities, approvals and licenses necessary or advisable to perform the Contractor's obligations under this Agreement, including the license under section 6.4.

Standard of care

- 2.4 Unless otherwise specified in this Agreement, the Contractor must perform the Services to a standard of care, skill and diligence maintained by persons providing, on a commercial basis, services similar to the Services.

Standards in relation to persons performing Services

- 2.5 The Contractor must ensure that all persons employed or retained to perform the Services are qualified and competent to perform them and are properly trained, instructed and supervised.

Instructions by Province

- 2.6 The Province may from time to time give the Contractor reasonable instructions (in writing or otherwise) as to the performance of the Services. The Contractor must comply with those instructions but, unless otherwise specified in this Agreement, the Contractor may determine the manner in which the instructions are carried out.

Confirmation of non-written instructions

- 2.7 If the Province provides an instruction under section 2.6 other than in writing, the Contractor may request that the instruction be confirmed by the Province in writing, which request the Province must comply with as soon as it is reasonably practicable to do so.

Effectiveness of non-written instructions

- 2.8 Requesting written confirmation of an instruction under section 2.7 does not relieve the Contractor from complying with the instruction at the time the instruction was given.

Applicable laws and policies

- 2.9 In the performance of the Contractor's obligations under this Agreement, the Contractor must comply with all applicable laws, and any policies communicated by the Province regarding access to and/or attendance at facilities owned, controlled or occupied by the Province. For greater certainty and without in any way limiting section 13.4, the Contractor must ensure that all of its employees, agents and Subcontractors comply with all such laws and policies in their performance of any obligations under this Agreement.

3 PAYMENT

Fees and expenses

- 3.1 If the Contractor complies with this Agreement, then the Province must pay to the Contractor at the times and on the conditions set out in Schedule B:
- (a) the fees described in that Schedule;
 - (b) the expenses, if any, described in that Schedule if they are supported, where applicable, by proper receipts and, in the Province's opinion, are necessarily incurred by the Contractor in providing the Services; and

- (c) any applicable taxes payable by the Province under law or agreement with the relevant taxation authorities on the fees and expenses described in paragraphs (a) and (b).

The Province is not obliged to pay to the Contractor more than the “Maximum Amount” specified in Schedule B on account of fees and expenses.

Statements of accounts

- 3.2 In order to obtain payment of any fees and expenses under this Agreement, the Contractor must submit to the Province a written statement of account in a form satisfactory to the Province upon completion of the Services or at other times described in Schedule B.

Withholding of amounts

- 3.3 Without limiting section 9.1, the Province may withhold from any payment due to the Contractor an amount sufficient to indemnify, in whole or in part, the Province and its employees and agents against any liens or other third-party claims that have arisen or could arise in connection with the provision of the Services. An amount withheld under this section must be promptly paid by the Province to the Contractor upon the basis for withholding the amount having been fully resolved to the satisfaction of the Province.

Appropriation

- 3.4 The Province’s obligation to pay money to the Contractor is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of the Province during which payment becomes due.

Currency

- 3.5 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

Non-resident income tax

- 3.6 If the Contractor is not a resident in Canada, the Contractor acknowledges that the Province may be required by law to withhold income tax from the fees described in Schedule B and then to remit that tax to the Receiver General of Canada on the Contractor’s behalf.

Prohibition against committing money

- 3.7 Without limiting section 13.10(a), the Contractor must not in relation to performing the Contractor’s obligations under this Agreement commit or purport to commit the Province to pay any money except as may be expressly provided for in this Agreement.

Refunds of taxes

- 3.8 The Contractor must:
 - (a) apply for, and use reasonable efforts to obtain, any available refund, credit, rebate or remission of federal, provincial or other tax or duty imposed on the Contractor as a result of this Agreement that the Province has paid or reimbursed to the Contractor or agreed to pay or reimburse to the Contractor under this Agreement; and
 - (b) immediately on receiving, or being credited with, any amount applied for under paragraph (a), remit that amount to the Province.

4 REPRESENTATIONS AND WARRANTIES

4.1 As at the date this Agreement is executed and delivered by, or on behalf of, the parties, the Contractor represents and warrants to the Province as follows:

- (a) except to the extent the Contractor has previously disclosed otherwise in writing to the Province,
 - (i) all information, statements, documents and reports furnished or submitted by the Contractor to the Province in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct,
 - (ii) the Contractor has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual or other agreements in place and available to enable the Contractor to fully perform the Services and to grant any licenses under this Agreement, and
 - (iii) the Contractor holds all permits, licenses, approvals and statutory authorities issued by any government or government agency that are necessary for the performance of the Contractor's obligations under this Agreement; and
- (b) if the Contractor is not an individual,
 - (i) the Contractor has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on behalf of, the Contractor, and
 - (ii) this Agreement has been legally and properly executed by, or on behalf of, the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

5 PRIVACY, SECURITY AND CONFIDENTIALITY

Privacy

5.1 The Contractor must comply with the Privacy Protection Schedule attached as Schedule E.

Security

5.2 The Contractor must:

- (a) make reasonable security arrangements to protect the Material from unauthorized access, collection, use, disclosure, alteration or disposal; and
- (b) comply with the Security Schedule attached as Schedule G.

Confidentiality

5.3 The Contractor must treat as confidential all information in the Material and all other information accessed or obtained by the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement, and not permit its disclosure or use without the Province's prior written consent except:

- (a) as required to perform the Contractor's obligations under this Agreement or to comply with applicable laws;
- (b) if it is information that is generally known to the public other than as result of a breach of this Agreement; or
- (c) if it is information in any Incorporated Material.

Public announcements

- 5.4 Any public announcement relating to this Agreement will be arranged by the Province and, if such consultation is reasonably practicable, after consultation with the Contractor.

Restrictions on promotion

- 5.5 The Contractor must not, without the prior written approval of the Province, refer for promotional purposes to the Province being a customer of the Contractor or the Province having entered into this Agreement.

6 MATERIAL AND INTELLECTUAL PROPERTY

Access to Material

- 6.1 If the Contractor receives a request for access to any of the Material from a person other than the Province, and this Agreement does not require or authorize the Contractor to provide that access, the Contractor must promptly advise the person to make the request to the Province.

Ownership and delivery of Material

- 6.2 The Province exclusively owns all property rights in the Material which are not intellectual property rights. The Contractor must deliver any Material to the Province immediately upon the Province's request.

Matters respecting intellectual property

- 6.3 The Province exclusively owns all intellectual property rights, including copyright, in:

- (a) Received Material that the Contractor receives from the Province; and
- (b) Produced Material, other than any Incorporated Material.

Upon the Province's request, the Contractor must deliver to the Province documents satisfactory to the Province that irrevocably waive in the Province's favour any moral rights which the Contractor (or employees of the Contractor) or a Subcontractor (or employees of a Subcontractor) may have in the Produced Material and that confirm the vesting in the Province of the copyright in the Produced Material, other than any Incorporated Material.

Rights in relation to Incorporated Material

- 6.4 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, the Contractor grants to the Province:
- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to exercise, in respect of that Incorporated Material, the rights set out in the *Copyright Act* (Canada), including the right to use, reproduce, modify, publish and distribute that Incorporated Material; and
 - (b) the right to sublicense or assign to third-parties any or all of the rights granted to the Province under section 6.4(a).

7 RECORDS AND REPORTS

Work reporting

- 7.1 Upon the Province's request, the Contractor must fully inform the Province of all work done by the Contractor or a Subcontractor in connection with providing the Services.

Time and expense records

- 7.2 If Schedule B provides for the Contractor to be paid fees at a daily or hourly rate or for the Contractor to be paid or reimbursed for expenses, the Contractor must maintain time records and books of account, invoices, receipts and vouchers of expenses in support of those payments, in form and content satisfactory to the

Province. Unless otherwise specified in this Agreement, the Contractor must retain such documents for a period of not less than seven years after this Agreement ends.

8 AUDIT

- 8.1 In addition to any other rights of inspection the Province may have under statute or otherwise, the Province may at any reasonable time and on reasonable notice to the Contractor, enter on the Contractor's premises to inspect and, at the Province's discretion, copy any of the Material and the Contractor must permit, and provide reasonable assistance to, the exercise by the Province of the Province's rights under this section.

9 INDEMNITY AND INSURANCE

Indemnity

- 9.1 The Contractor must indemnify and save harmless the Province and the Province's employees and agents from any loss, claim (including any claim of infringement of third-party intellectual property rights), damage award, action, cause of action, cost or expense that the Province or any of the Province's employees or agents may sustain, incur, suffer or be put to at any time, either before or after this Agreement ends, (each a "Loss") to the extent the Loss is directly or indirectly caused or contributed to by:
- (a) any act or omission by the Contractor or by any of the Contractor's agents, employees, officers, directors or Subcontractors in connection with this Agreement; or
 - (b) any representation or warranty of the Contractor being or becoming untrue or incorrect.

Insurance

- 9.2 The Contractor must comply with the Insurance Schedule attached as Schedule D.

Workers compensation

- 9.3 Without limiting the generality of section 2.9, the Contractor must comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

Personal optional protection

- 9.4 The Contractor must apply for and maintain personal optional protection insurance (consisting of income replacement and medical care coverage) during the Term at the Contractor's expense if:
- (a) the Contractor is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act* or similar laws in other jurisdictions; and
 - (b) such personal optional protection insurance is available for the Contractor from WorkSafeBC or other sources.

Evidence of coverage

- 9.5 Within 10 Business Days of being requested to do so by the Province, the Contractor must provide the Province with evidence of the Contractor's compliance with sections 9.3 and 9.4.

10 FORCE MAJEURE

Definitions relating to force majeure

- 10.1 In this section and sections 10.2 and 10.3:
- (a) "Event of Force Majeure" means one of the following events:

- (i) a natural disaster, fire, flood, storm, epidemic or power failure,
- (ii) a war (declared and undeclared), insurrection or act of terrorism or piracy,
- (iii) a strike (including illegal work stoppage or slowdown) or lockout, or
- (iv) a freight embargo

if the event prevents a party from performing the party's obligations in accordance with this Agreement and is beyond the reasonable control of that party; and

- (b) "Affected Party" means a party prevented from performing the party's obligations in accordance with this Agreement by an Event of Force Majeure.

Consequence of Event of Force Majeure

- 10.2 An Affected Party is not liable to the other party for any failure or delay in the performance of the Affected Party's obligations under this Agreement resulting from an Event of Force Majeure and any time periods for the performance of such obligations are automatically extended for the duration of the Event of Force Majeure provided that the Affected Party complies with the requirements of section 10.3.

Duties of Affected Party

- 10.3 An Affected Party must promptly notify the other party in writing upon the occurrence of the Event of Force Majeure and make all reasonable efforts to prevent, control or limit the effect of the Event of Force Majeure so as to resume compliance with the Affected Party's obligations under this Agreement as soon as possible.

11 DEFAULT AND TERMINATION

Definitions relating to default and termination

- 11.1 In this section and sections 11.2 to 11.4:

- (a) "Event of Default" means any of the following:
 - (i) an Insolvency Event,
 - (ii) the Contractor fails to perform any of the Contractor's obligations under this Agreement, or
 - (iii) any representation or warranty made by the Contractor in this Agreement is untrue or incorrect; and
- (b) "Insolvency Event" means any of the following:
 - (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
 - (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of the Contractor's creditors or otherwise acknowledges the Contractor's insolvency,
 - (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
 - (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),
 - (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
 - (vi) the Contractor ceases, in the Province's reasonable opinion, to carry on business as a going concern.

Province's options on default

- 11.2 On the happening of an Event of Default, or at any time thereafter, the Province may, at its option, elect to do any one or more of the following:
 - (a) by written notice to the Contractor, require that the Event of Default be remedied within a time

- period specified in the notice;
- (b) pursue any remedy or take any other action available to it at law or in equity; or
- (c) by written notice to the Contractor, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under section 11.2(a).

Delay not a waiver

- 11.3 No failure or delay on the part of the Province to exercise its rights in relation to an Event of Default will constitute a waiver by the Province of such rights.

Province's right to terminate other than for default

- 11.4 In addition to the Province's right to terminate this Agreement under section 11.2(c) on the happening of an Event of Default, the Province may terminate this Agreement for any reason by giving at least 10 days' written notice of termination to the Contractor.

Payment consequences of termination

- 11.5 Unless Schedule B otherwise provides, if the Province terminates this Agreement under section 11.4:
- (a) the Province must, within 30 days of such termination, pay to the Contractor any unpaid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that was completed to the Province's satisfaction before termination of this Agreement; and
 - (b) the Contractor must, within 30 days of such termination, repay to the Province any paid portion of the fees and expenses described in Schedule B which corresponds with the portion of the Services that the Province has notified the Contractor in writing was not completed to the Province's satisfaction before termination of this Agreement.

Discharge of liability

- 11.6 The payment by the Province of the amount described in section 11.5(a) discharges the Province from all liability to make payments to the Contractor under this Agreement.

Notice in relation to Events of Default

- 11.7 If the Contractor becomes aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, the Contractor must promptly notify the Province of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps the Contractor proposes to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps the Contractor proposes to take to prevent the occurrence of the anticipated Event of Default.

12 DISPUTE RESOLUTION

Dispute resolution process

- 12.1 In the event of any dispute between the parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
- (a) the parties must initially attempt to resolve the dispute through collaborative negotiation;
 - (b) if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties must then attempt to resolve the dispute through mediation; and
 - (c) if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute must be referred to and finally determined by arbitration under the *Arbitration Act* and:
 - (i) the arbitration will be administered by the Vancouver International Arbitration Centre and will be conducted in accordance with its Rules of Arbitration;

- (ii) there will be a single arbitrator; and
- (iii) British Columbia law is the applicable law.

Location of arbitration or mediation

- 12.2 Unless the parties otherwise agree in writing, an arbitration or mediation under section 12.1 will be held in Victoria, British Columbia.

Costs of mediation or arbitration

- 12.3 Unless the parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the parties must share equally the costs of a mediation or arbitration under section 12.1 other than those costs relating to the production of expert evidence or representation by counsel.

13 MISCELLANEOUS

Delivery of notices

- 13.1 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- (a) by fax to the addressee's fax number specified on the first page of this Agreement, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
 - (b) by hand to the addressee's address specified on the first page of this Agreement, in which case it will be deemed to be received on the day of its delivery; or
 - (c) by prepaid post to the addressee's address specified on the first page of this Agreement, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

Change of address or fax number

- 13.2 Either party may from time to time give notice to the other party of a substitute address or fax number, which from the date such notice is given will supersede for purposes of section 13.1 any previous address or fax number specified for the party giving the notice.

Assignment

- 13.3 The Contractor must not assign any of the Contractor's rights or obligations under this Agreement without the Province's prior written consent. Upon providing written notice to the Contractor, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

Subcontracting

- 13.4 The Contractor must not subcontract any of the Contractor's obligations under this Agreement to any person without the Province's prior written consent, excepting persons listed in the attached Schedule C. No subcontract, whether consented to or not, relieves the Contractor from any obligations under this Agreement. The Contractor must ensure that:
- (a) any person retained by the Contractor to perform obligations under this Agreement; and
 - (b) any person retained by a person described in paragraph (a) to perform those obligations fully complies with this Agreement in performing the subcontracted obligations.

Waiver

- 13.5 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving party and is not a waiver of any other term or breach.

Modifications

- 13.6 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the parties.

Entire agreement

- 13.7 This Agreement (including any modification of it) constitutes the entire agreement between the parties as to performance of the Services.

Survival of certain provisions

- 13.8 Sections 2.9, 3.1 to 3.4, 3.7, 3.8, 5.1 to 5.5, 6.1 to 6.4, 7.1, 7.2, 8.1, 9.1, 9.2, 9.5, 10.1 to 10.3, 11.2, 11.3, 11.5, 11.6, 12.1 to 12.3, 13.1, 13.2, 13.8, and 13.10, any accrued but unpaid payment obligations, and any other sections of this Agreement (including schedules) which, by their terms or nature, are intended to survive the completion of the Services or termination of this Agreement, will continue in force indefinitely subject to any applicable limitation period prescribed by law, even after this Agreement ends.

Schedules

- 13.9 The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.

Independent contractor

- 13.10 In relation to the performance of the Contractor's obligations under this Agreement, the Contractor is an independent contractor and not:
- (a) an employee or partner of the Province; or
 - (b) an agent of the Province except as may be expressly provided for in this Agreement.

The Contractor must not act or purport to act contrary to this section.

Personnel not to be employees of Province

- 13.11 The Contractor must not do anything that would result in personnel hired or used by the Contractor or a Subcontractor in relation to providing the Services being considered employees of the Province.

Key Personnel

- 13.12 If one or more individuals are specified as “Key Personnel” of the Contractor in Part 4 of Schedule A, the Contractor must cause those individuals to perform the Services on the Contractor’s behalf, unless the Province otherwise approves in writing, which approval must not be unreasonably withheld.

Pertinent information

- 13.13 The Province must make available to the Contractor all information in the Province’s possession which the Province considers pertinent to the performance of the Services.

Conflict of interest

- 13.14 The Contractor must not provide any services to any person in circumstances which, in the Province’s reasonable opinion, could give rise to a conflict of interest between the Contractor’s duties to that person and the Contractor’s duties to the Province under this Agreement.

Time

- 13.15 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

Conflicts among provisions

- 13.16 Conflicts among provisions of this Agreement will be resolved as follows:
- (a) a provision in the body of this Agreement will prevail over any conflicting provision in, attached to or incorporated by reference into a schedule, unless that conflicting provision expressly states otherwise; and
 - (b) a provision in a schedule will prevail over any conflicting provision in a document attached to or incorporated by reference into a schedule, unless the schedule expressly states otherwise.

Agreement not permit nor fetter

- 13.17 This Agreement does not operate as a permit, license, approval or other statutory authority which the Contractor may be required to obtain from the Province or any of its agencies in order to provide the Services. Nothing in this Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.

Remainder not affected by invalidity

- 13.18 If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired and will be valid and enforceable to the extent permitted by law.

Further assurances

- 13.19 Each party must perform the acts, execute and deliver the writings, and give the assurances as may be reasonably necessary to give full effect to this Agreement.

Additional terms

- 13.20 Any additional terms set out in the attached Schedule F apply to this Agreement.

Tax Verification

13.21 Any terms set out in the attached Schedule H apply to this Agreement.

Governing law

13.22 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws applicable in British Columbia.

14 INTERPRETATION

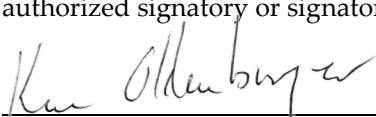

14.1 In this Agreement:

- (a) “includes” and “including” are not intended to be limiting;
- (b) unless the context otherwise requires, references to sections by number are to sections of this Agreement;
- (c) the Contractor and the Province are referred to as “the parties” and each of them as a “party”;
- (d) “attached” means attached to this Agreement when used in relation to a schedule;
- (e) unless otherwise specified, a reference to a statute by name means the statute of British Columbia by that name, as amended or replaced from time to time;
- (f) the headings have been inserted for convenience of reference only and are not intended to describe, enlarge or restrict the scope or meaning of this Agreement or any provision of it;
- (g) “person” includes an individual, partnership, corporation or legal entity of any nature; and
- (h) unless the context otherwise requires, words expressed in the singular include the plural and *vice versa*.

15 EXECUTION AND DELIVERY OF AGREEMENT

15.1 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in section 13.1 or any other method agreed to by the parties.

The parties have executed this Agreement as follows:

<p>SIGNED on the 12TH day of JANUARY, 2024 by the Contractor (or, if not an individual, on its behalf by its authorized signatory or signatories):</p> <p> Signature(s) Ken Digitally signed by Ken Ken Oldenburger Oldenburger Print Name(s) ger Date: 2024.01.12 11:53:18 -08'00' Owner/Consultant Print Title(s)</p>	<p>SIGNED on the 12TH day of JANUARY, 2024 on behalf of the Province by its duly authorized representative:</p> <p> Signature DARRELL LE HOULLIER Print Name CHAIR Print Title</p>
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Schedule A – Services

PART 1. TERM:

1. The term of this Agreement commences on January 12, 2024 and ends on March 31, 2024.

PART 2. SERVICES:

To develop an Operational Records Classification System (ORCS) schedule under the Information Management Act (IMA) (BC 2015 c. 27), for seven tribunals under the Environmental Appeal Board Appeal Tribunal cluster. The seven tribunals include the Environmental Appeal Board (EAB), Forest Appeal Commission (FAC), Energy Resource Appeal Tribunal (ERAT), Skilled Trades BC Appeal Board (STBCAB), Community Care and Assisted Living Appeal Board (CCLALAB), Hospital Appeal Board (HAB), and the Financial Services Tribunal (FST).

PART 3. RELATED DOCUMENTATION:

Not applicable.

PART 4. KEY PERSONNEL:

1. The Key Personnel of the Contractor are as follows:
 - (a) Ken Oldenburger
Ph.: (250) 889-1992
Email: koconsult@shaw.ca
2. The Key Personnel for the Environmental Appeal Board:
 - (b) Vivia DeWolfe
Director, Finance and Operations
Ph.: (778) 974-4950
Email: vivia.dewolfe@gov.bc.ca

Schedule B – Fees and Expenses

1. MAXIMUM AMOUNT PAYABLE:

Maximum Amount: Despite sections 2 and 3 of this Schedule, \$21,000.00 plus GST is the maximum amount which the Province is obliged to pay to the Contractor for fees and expenses under this Agreement (exclusive of any applicable taxes described in section 3.1(c) of this Agreement).

2. FEES:

Hourly Rate

Fees: at a rate of \$175.00 per hour for those hours during the Term when the Contractor provides the Services.

3. EXPENSES:

Expenses:

None.

4. STATEMENTS OF ACCOUNT:

Statements of Account: In order to obtain payment of any fees and expenses under this Agreement for a period from and including the 1st day of a month to and including the last day of that month (each a "Billing Period"), the Contractor must deliver to the Province on a date after the Billing Period (each a "Billing Date"), a written statement of account in a form satisfactory to the Province containing:

- (a) the Contractor's legal name and address;
- (b) the date of the statement, and the Billing Period to which the statement pertains;
- (c) the Contractor's calculation of all fees claimed for that Billing Period, including a declaration by the Contractor of all hours worked during the Billing Period for which the Contractor claims fees and a description of the applicable fee rates;
- (d) a chronological listing, in reasonable detail, of any expenses claimed by the Contractor for the Billing Period with receipts attached, if applicable, and, if the Contractor is claiming reimbursement of any GST or other applicable taxes paid or payable by the Contractor in relation to those expenses, a description of any credits, rebates, refunds or remissions the Contractor is entitled to from the relevant taxation authorities in relation to those taxes;
- (e) the Contractor's calculation of any applicable taxes payable by the Province in relation to the Services for the Billing Period;
- (f) a description of this Agreement;
- (g) a statement number for identification; and
- (h) any other billing information reasonably requested by the Province.

5. PAYMENTS DUE:

Payments Due: Within 30 days of the Province's receipt of the Contractor's written statement of account delivered in accordance with this Schedule, the Province must pay the Contractor the fees and expenses (plus all applicable taxes) claimed in the statement if they are in accordance with this Schedule. Statements of account or contract invoices offering an early payment discount may be paid by the Province as required to obtain the discount.

Schedule C – Approved Subcontractor(s)

Not applicable.

Schedule D – Insurance

1. The Contractor must, without limiting the Contractor's obligations or liabilities and at the Contractor's own expense, purchase and maintain throughout the Term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Province:
 - (a) Commercial General Liability in an amount not less than \$2,000,000.00 inclusive per occurrence against bodily injury, personal injury and property damage and including liability assumed under this Agreement and this insurance must
 - (i) include the Province as an additional insured,
 - (ii) be endorsed to provide the Province with 30 days advance written notice of cancellation or material change, and
 - (iii) include a cross liability clause.
2. All insurance described in section 1 of this Schedule must:
 - (a) be primary; and
 - (b) not require the sharing of any loss by any insurer of the Province.
3. The Contractor must provide the Province with evidence of all required insurance as follows:
 - (a) within 10 Business Days of commencement of the Services, the Contractor must provide to the Province evidence of all required insurance in the form of a completed Province of British Columbia Certificate of Insurance;
 - (b) if any required insurance policy expires before the end of the Term, the Contractor must provide to the Province within 10 Business Days of the policy's expiration, evidence of a new or renewal policy meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance; and
 - (c) despite paragraph (a) or (b) above, if requested by the Province at any time, the Contractor must provide to the Province certified copies of the required insurance policies.
4. The Contractor must obtain, maintain and pay for any additional insurance which the Contractor is required by law to carry, or which the Contractor considers necessary to cover risks not otherwise covered by insurance specified in this Schedule in the Contractor's sole discretion.

Schedule E – Privacy Protection Schedule

Definitions

1. In this Schedule,
 - (a) “**Act**” means the *Freedom of Information and Protection of Privacy Act* including any regulation made under it;
 - (b) “**contact information**” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;
 - (c) “**personal information**” means recorded information about an identifiable individual, other than contact information, collected or created by the Contractor as a result of the Agreement or any previous agreement between the Province and the Contractor dealing with the same subject matter as the Agreement;
 - (d) “**privacy course**” means the Province’s online privacy and information sharing training course or another course approved by the Province; and
 - (e) “**public body**” means “public body” as defined in the Act;
 - (f) “**third party request for disclosure**” means a subpoena, warrant, order, demand or request from an authority inside or outside of Canada for the unauthorized disclosure of personal information to which the Act applies;
 - (g) “**service provider**” means a person retained under a contract to perform services for a public body; and
 - (h) “**unauthorized disclosure of personal information**” means disclosure of, production of or the provision of access to personal information to which the Act applies, if that disclosure, production or access is not authorized by the Act.

Purpose

2. The purpose of this Schedule is to:
 - (a) enable the Province to comply with the Province’s statutory obligations under the Act with respect to personal information; and
 - (b) ensure that, as a service provider, the Contractor is aware of and complies with the Contractor’s statutory obligations under the Act with respect to personal information.

Acknowledgements

3. The Contractor acknowledges and agrees that
 - (a) it is a service provider and, as such, the requirements and restrictions established by Part 3 of the Act apply to the Contractor in respect of personal information;

- (b) unless the Agreement otherwise specifies, all personal information in the custody of the Contractor is and remains under the control of the Province; and
- (c) unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor may only collect, use, disclose or store personal information that relates directly to and is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.

Collection of Personal Information

- 4. Unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor may only collect or create personal information that relates directly to and is necessary for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
- 5. The Contractor must collect personal information directly from the individual the information is about unless:
 - (a) the Province provides personal information to the Contractor;
 - (b) the Agreement otherwise specifies; or
 - (c) the Province otherwise directs in writing.
- 6. Where the Contractor collects personal information directly from the individual the information is about, the Contractor must tell that individual:
 - (a) the purpose for collecting it;
 - (b) the legal authority for collecting it; and
 - (c) the contact information of the individual designated by the Province to answer questions about the Contractor's collection of personal information.

Privacy Training

- 7. The Contractor must ensure that each individual who will provide services under the Agreement that involve the access, collection or creation of personal information will complete, at the Contractor's expense, the privacy course prior to that individual providing those services.
- 8. The requirement in section 7 will only apply to individuals who have not previously completed the privacy course.

Accuracy of Personal Information

- 9. The Contractor must make every reasonable effort to ensure the accuracy and completeness of any personal information to be used by the Contractor or the Province to make a decision that directly affects the individual the information is about.

Requests for Access to Information

- 10. If the Contractor receives a request for access to information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province unless the Agreement expressly requires the Contractor to provide such access. If the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made,

the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Correction of Personal Information

11. Within 5 Business Days of receiving a written direction from the Province to correct or annotate any personal information, the Contractor must annotate or correct the information in accordance with the direction.
12. When issuing a written direction under section 11, the Province must advise the Contractor of the date the correction request was received by the Province in order that the Contractor may comply with section 13.
13. Within 5 Business Days of correcting or annotating any personal information under section 11, the Contractor must provide the corrected or annotated information to any party to whom, within one year prior to the date the correction request was received by the Province, the Contractor disclosed the information being corrected or annotated.
14. If the Contractor receives a request for correction of personal information from a person other than the Province, the Contractor must promptly advise the person to make the request to the Province and, if the Province has advised the Contractor of the name or title and contact information of an official of the Province to whom such requests are to be made, the Contractor must also promptly provide that official's name or title and contact information to the person making the request.

Protection of Personal Information

15. Without limiting any other provision of the Agreement, the Contractor must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, including without limitation by ensuring that the integrity of the personal information is preserved. Without limiting the general nature of the foregoing sentence, the Contractor will ensure that all personal information is securely segregated from any information under the control of the Contractor or third parties to prevent unintended mixing of personal information with other information or access to personal information by unauthorized persons and to enable personal information to be identified and separated from the information of the Contractor or third parties.

Storage of and Access to Personal Information

16. The Contractor must comply with the requirements under the Act concerning storage of personal information outside of Canada, including, if required by the Province, by supporting the Province with completion of such assessments as may be required by law.
17. The Contractor must not change the location where personal information is stored without receiving prior authorization of the Province in writing.
18. Without limiting any other provision of the Agreement, the Contractor will implement and maintain an access log documenting all access to personal information, including a list of all persons that access any personal information. The Contractor will provide a copy of the access log to the Province upon request.

Retention of Personal Information

19. Unless the Agreement otherwise specifies, the Contractor must retain personal information until directed by the Province in writing to dispose of it or deliver it as specified in the direction.

Use of Personal Information

20. Unless the Province otherwise directs in writing, the Contractor may only use personal information if that

use is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement. For clarity, unless the Agreement otherwise specifies or the Province otherwise directs in writing, the Contractor must not anonymize, aggregate or otherwise alter or modify personal information, including by converting personal information into non-personal information, or analyze personal information (whether by manual or automated means) for any purpose, including for the purpose of developing insights, conclusions or other information from personal information.

Metadata

21. Where the Contractor has or generates metadata as a result of services provided to the Province, where that metadata is personal information, the Contractor will:
- (a) not use it or disclose it to any other party except where the Agreement otherwise specifies; and
 - (b) remove or destroy individual identifiers, if practicable.

Disclosure of Personal Information

22. Unless the Province otherwise directs in writing, the Contractor may only disclose personal information to any person other than the Province if the disclosure is for the performance of the Contractor's obligations, or the exercise of the Contractor's rights, under the Agreement.
23. If in relation to personal information, the Contractor:
- (a) receives a third-party request for disclosure;
 - (b) receives a request to disclose, produce or provide access that the Contractor knows or has reason to suspect is for the purpose of responding to a third-party request for disclosure; or
 - (c) has reason to suspect that an unauthorized disclosure of personal information has occurred in response to a third-party request for disclosure,
- subject to section 24, the Contractor must immediately notify the Province.
24. If the Contractor receives a third-party request described in section 23(a) or (b) but is unable to notify the Province as required by section 23, the Contractor must instead:
- (a) use its best efforts to direct the party making the third-party request to the Province;
 - (b) provide the Province with reasonable assistance to contest the third-party request; and
 - (c) take reasonable steps to challenge the third party-request, including by presenting evidence with respect to:
 - (i) the control of personal information by the Province as a public body under the Act;
 - (ii) the application of the Act to the Contractor as a service provider to the Province;
 - (iii) the conflict between the Act and the third-party request; and
 - (iv) the potential for the Contractor to be liable for an offence under the Act as a result of complying with the third-party request.

Notice of Unauthorized Disclosure

25. In addition to any obligation the Contractor may have to provide the notification contemplated by section 30.5 of the Act, if the Contractor knows that there has been an unauthorized disclosure of personal information, the Contractor must immediately notify the Province.

Compliance with the Act and Directions

26. The Contractor must in relation to personal information comply with:
- (a) the requirements of the Act applicable to the Contractor as a service provider, including any regulation made under the Act and the terms of this Schedule; and
 - (b) any direction given by the Province under this Schedule.
27. The Contractor acknowledges that it is familiar with the requirements of the Act governing personal information that are applicable to it as a service provider.
28. The Contractor will provide the Province with such information as may be reasonably requested by the Province to assist the Province in confirming the Contractor's compliance with this Schedule.

Notice of Non-Compliance

29. If for any reason the Contractor does not comply, or anticipates that it will be unable to comply in any respect, with any provision in this Schedule, the Contractor must promptly notify the Province of the particulars of the non-compliance or anticipated non-compliance and what steps it proposes to take to address, or prevent recurrence of, the non-compliance or anticipated non-compliance.

Termination of Agreement

30. In addition to any other rights of termination which the Province may have under the Agreement or otherwise at law, the Province may, subject to any provisions in the Agreement establishing mandatory cure periods for defaults by the Contractor, terminate the Agreement by giving written notice of such termination to the Contractor, upon any failure of the Contractor to comply with this Schedule in a material respect.

Interpretation

31. In this Schedule, references to sections by number are to sections of this Schedule unless otherwise specified in this Schedule.
32. Any reference to "Contractor" in this Schedule includes any subcontractor or agent retained by the Contractor to perform obligations under the Agreement and the Contractor must ensure that any such subcontractors and agents comply with the requirements of the Act applicable to them.
33. The obligations of the Contractor in this Schedule will survive the termination of the Agreement.
34. If a provision of the Agreement (including any direction given by the Province under this Schedule) conflicts with a requirement of the Act, including any regulation made under the Act, the conflicting provision of the Agreement (or direction) will be inoperative to the extent of the conflict.
35. The Contractor must comply with the provisions of this Schedule despite any conflicting provision of the Agreement or the law of any jurisdiction outside Canada.
36. Nothing in this Schedule requires the Contractor to contravene the law of any jurisdiction outside Canada unless such contravention is required to comply with the Act.



Environmental Appeal Board

Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 387-3464

www.bceab.ca

Fax: (250) 356-9923

Email: info@bceab.ca

[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing to confirm receipt of your request for records dated [Date]. I understand that you have requested the following records from the Environmental Appeal Board:

- [List of records]

Section 7 of the *Freedom of Information and Protection of Privacy Act* (the "*Act*") requires that I respond within 30 days, unless I extend that deadline in accordance with section 10 of the *Act*, transfer the request to another public body under section 11 of the *Act*, or ask the privacy commissioner for authorization to disregard the request under section 43 of the *Act*. Other referrals and processes may also extend that 30-day period. If any such referrals or processes are undertaken, I will write to advise as much.

The end of the 30-day period is [Date]; however, the Environmental Appeal Board will not be open on that date. Section 25.5 of the *Interpretation Act* specifies that, in such circumstances, the period therefore ends on the next date that the Environmental Appeal Board will be open. That is [Date].

In line with the requirements set out above, I will provide a substantive response to your inquiry by [Date].

Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Darrell Le Houillier

Chair

Environmental Appeal Board



Environmental Appeal Board

Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 387-3464

www.bceab.ca

Fax: (250) 356-9923

Email: info@bceab.ca

[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing further to your request for records dated [Date]. I understand that you have requested the following records from the Environmental Appeal Board:

- [List of records]

I have determined that you are entitled to access the following records:

- [list of records]

The records have been redacted to remove information would constitute an unreasonable invasion of the named individuals' personal privacy. **This information includes residential addresses, XXX.** Under section 53 of the Freedom of Information and Protection of Privacy Act, you may apply to the Information and Privacy Commissioner to review my decision to refuse access to those portions of the records.

I have determined that you are not entitled to access to the following records:

- [list of records]

The records to which you have been granted access have been attached electronically. Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Darrell Le Houillier

Chair

Environmental Appeal Board



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[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing further to your request for records dated [Date]. I understand that you have requested the following records from the Environmental Appeal Board:

- [List of records]

Section 11(b) of the *Freedom of Information and Protection of Privacy Act* allows the head of a public body to transfer a request for records if they are satisfied that:

- the requested records were produced by or for the other public body;
- the other public body was the first to obtain the record; or
- the record is in the custody or control of the other public body.

I have determined that subsection (x) applies to [records]. Specifically, these records were XXX.

Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Darrell Le Houillier

Chair

Environmental Appeal Board



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Fax: (250) 356-9923

Email: info@bceab.ca

[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing to provide you notice as required by section 23 of the *Freedom of Information and Protection of Privacy Act* (the "Act"). This notice is to advise that the Environmental Appeal Board has received an application for disclosure of records, which I have reason to believe contain information that might be exempted from disclosure requirements under the following sections of the *Act*:

- section 18.1 (where disclosure could reasonably be expected to harm certain interests of an Indigenous people),
- section 21 (where disclosure could reasonably be expected to harm the business interests of third party), or
- section 22 (where disclosure would be an unreasonable invasion of personal privacy).

This application may affect your interests or invade your privacy.

Specifically, the relevant records are:

- [List of records]

I have reason to believe they may be exempted from disclosure under the sections listed above because XXX.

You may, within 20 days, consent to the disclosure of these records or make written representations to me, explaining why the information should not be disclosed. The due date for your response is [Date].

Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Le Houillier". The signature is fluid and cursive, with the first letter "D" being large and prominent.

Darrell Le Houillier

Chair

Environmental Appeal Board



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Tel: (250) 387-3464

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Fax: (250) 356-9923

Email: info@bceab.ca

[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing further to your request for records dated [Date]. I understand that you have requested the following records from the Environmental Appeal Board:

- [List of records]

I have determined that your request contains information that may affect the interests or invade the personal privacy of a third party. Section 23 of the *Freedom of Information and Protection of Privacy Act* (the "*Act*") requires me to notify a third party when I have reason to believe that requested records contain information about that party that might be exempted from disclosure requirements under certain sections of the *Act*. Those sections are:

- section 18.1 (where disclosure could reasonably be expected to harm certain interests of an Indigenous people),
- section 21 (where disclosure could reasonably be expected to harm the business interests of third party), or
- section 22 (where disclosure would be an unreasonable invasion of personal privacy).

Specifically, I have reason to believe that [records] contain information that might be exempted from disclosure under section XX of the *Act*. The third party is being given an opportunity to make representations about disclosure of those records.

Section 24 of the *Act* requires that I give the third party 20 days to make their representations before I decide whether to give access to the requested records, in whole or in part. I must make my decision within 30 days of when I notified the third party about your request for records.

Because I notified the third party on [Date], their representations are due by [Date] and my decision is due by [Date].

Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Darrell Le Houillier
Chair
Environmental Appeal Board



Environmental Appeal Board

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www.bceab.ca

Fax: (250) 356-9923

Email: info@bceab.ca

[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing further to my notice dated [Date], advising that the Environmental Appeal Board has received an application for the disclosure of records under the *Freedom of Information and Protection of Privacy Act* (the "Act"). As my notice explained, I had reason to believe that the following records contain information that might be exempted from disclosure under section XX of the Act.

- [list of records] (the "Records").

I invited you to make representations about disclosure of those records. Section 24 of the Act requires that I give the third party 20 days to make those representations. You provided submissions within that period. I have considered them in deciding whether to disclose the Records to the applicant.

I have decided XXX.

You may seek a review of this decision by requesting a review from the Information and Privacy Commissioner under section 53 of the Act. Such a request must be filed within 20 days. If no review is requested, I will disclose grant the applicant access to the record(s) described above.

Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Darrell Le Houillier

Chair

Environmental Appeal Board



Environmental Appeal Board

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www.bceab.ca

Fax: (250) 356-9923

Email: info@bceab.ca

[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing further to my letter dated [Date], advising that I had provided notice to a third party, stating that I had reason to believe the following records you have requested contain information that might be exempted from disclosure under sections 18.1, 21 or 22 of the *Freedom of Information and Protection of Privacy Act*.

- [list of records] (the "Records").

I invited and have received submissions from the third party. I have decided to grant you access to the Records.

Before I do so, however, the third party has the right to request a review of my decision from the Information and Privacy Commissioner, under section 53 of the *Act*. They have 20 days within which to request a review. If they do not do so, I am authorized to release the records to you under section 24(3) of the *Act*.

Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Darrell Le Houillier

Chair

Environmental Appeal Board



MINISTRY OF ATTORNEY GENERAL

Notice of Intent

EAB TRIBUNAL CLUSTER ORCS DEVELOPMENT

Opportunity ID:	[@@ Number @@]
Issue Date:	December 2023
Closing Date and Time (Pacific Time):	January 2, 2024 11:00 PM

Submission Delivery

Submissions must be submitted using the following delivery method:

Email submission: Submit a Submission by email. Submissions by email must be submitted to the email address specified below in accordance with the email submission instructions set out in the process rules for the subject RFX. Include the opportunity description and ID in the subject line of the email.

Vivia.DeWolfe@gov.bc.ca

Official Contact

Vivia DeWolfe, Director Finance and Operations
Vivia.DeWolfe@gov.bc.ca

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1. Summary

1.1 Overview

Notice is hereby given that the Ministry of Attorney General, Environmental Appeal Board is contemplating making a direct award of a contract to Oldenburger Consulting (the “**Supplier**”).

The high-level details of the contemplated contract are generally described below.

This project is to develop an Operational Records Classification System (ORCS) schedule under the Information Management Act (IMA) (BC 2015 c. 27), for seven tribunals under the Environmental Appeal Board Appeal Tribunal cluster. The seven tribunals include the Environmental Appeal Board (EAB), Forest Appeal Commission (FAC), Energy Resource Appeal Tribunal (ERAT), Skilled Trades BC Appeal Board (STBCAB), Community Care and Assisted Living Appeal Board (CCLALAB), Hospital Appeal Board (HAB), and the Financial Services Tribunal (FST).

1.2 Contract Term and Aggregate Contract Value

The term of the contract is expected to be *January 6, 2024 to March 31, 2024*.

The aggregate value of the contract is expected not to exceed, exclusive of applicable taxes \$21,000.

1.3 Rationale for Contemplating a Direct Award

The Province is contemplating a direct award with the Supplier for the following reasons: The contractor has many years of experience drafting ORCS for many ministries across the Province of BC. The contractor completed the first phase of a project identifying what is required across the tribunal sector to improve records management. The contractor has the background and experience to develop the ORCS for our seven boards.

2. Definitions Used in this Notice of Intent

Throughout this Notice of Intent, the following definitions will be used (and the singular is interchangeable with the plural context permitting):

"Addenda" means additional information regarding this NOI, including amendments to the NOI that may be posted on BC Bid. The "Addenda" menu tab is located on the left margin of the specific opportunity in the BC Bid application. Amendments will be noted in the amendment reason section of the "Overview" menu tab located on the left margin of the specific opportunity in the BC Bid application. Suppliers may need to select and set the symbol denoted as ">>" to reveal the menu tab items.

"BC Bid" means the electronic tendering service maintained by the Province including the website at <https://www.bcbid.gov.bc.ca> or any replacement website.

"Challenge" means the written response from a Respondent submitted in reply to this NOI.

"Closing Date and Time" means the time within which responses should be made to the NOI in order to receive consideration as set out in the "RFx general information" section of the "overview" menu tab; and as initially set out on the cover page to the NOI.

"Issue Date" means the date the NOI was posted to BC Bid as set out in the "RFx general information" section of the "overview" menu tab; and as initially set out on the cover page to the NOI.

"Ministry" means the Ministry of Attorney General.

"NOI" or **"Notice of Intent"** means this document, including the processes described in this document, as may be modified from time to time.

"Official Contact" means the individual named on the "opportunity details" menu tab for the NOI serving as the official NOI contact person for the Province, as initially set out on the cover page of the NOI.

"Province" means His Majesty the King in right of the Province of British Columbia and includes the Ministry.

"Respondent" means a supplier that submits a Challenge.

"RFx" has the same meaning as NOI as the term may appear in BC Bid, the Submission Declaration Form or BC Bid pop-up advisories associated with submitting a Challenge.

"Submission" as used in the Submission Declaration Form and within BC Bid and its pop-up advisories related to this NOI has the same meaning as Challenge.

“Submission Declaration Form” means the form so identified and named in the NOI for use with Challenges submitted by email or hard copy delivery if such submission methods are allowed by the NOI.

“Supplier” means the natural person or legal entity that is identified in section 1.1 to this NOI.

“You” and **“Your”** as used in the Submission Declaration Form and any pop-up advisories related to this NOI has the same meaning as Respondent.

3. Notice of Intent Challenge Guidelines

- a)** Any Challenge objecting to the NOI is required to be in English and sent to the Official Contact in writing or such Challenge will not be considered.
- b)** Challenges to the NOI should be received by the Official Contact before the Closing Date and Time.
- c)** The Province reserves the right to disregard any Challenge to an NOI received after the Closing Date and Time.
- d)** Challenges to the NOI should provide reasons for the Challenge.
- e)** A Submission Declaration Form must accompany any Challenges submitted by email or hard copy.

3.1 Review of Challenges

- a)** If the Province receives a Challenge to the NOI before the Closing Date and Time, the Province must assess whether the challenge is justified; and whether a competitive process should be undertaken.
- b)** If no Challenges to the NOI are received prior to the Closing Date and Time or no Respondent submits a Challenge that is justified by the Province, the Province may commence contract negotiations with the Supplier for the goods, services and/or construction described in the NOI.

3.3. Enquiries are Made to the Official Contact

Enquiries and any responses providing new information will be recorded and posted to

BC Bid as Addenda or otherwise distributed to Respondents. Despite the foregoing, the Province may choose in its sole discretion not to respond, respond in whole or in part, or reformulate enquiries in whole or in part. The Province may in its sole discretion choose whether to post any such enquiries (as reformulated if reformulated) and responses to BC Bid or otherwise distribute to Respondents.

3.4. Ownership of Challenges

Challenges to this NOI become the property of the Province and will be held, subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.

3.5. Respondents Expenses

The Province will not be responsible for any costs or expenses incurred by any Respondent challenging this NOI.

Appendix A: Challenge Form

Document is available for download in the “RFx documents” section for this NOI.

Appendix B: Submission Declaration Form

Document is available for download in the “RFx documents” section for this NOI.



MINISTRY OF ATTORNEY GENERAL

Notice of Intent

EAB TRIBUNAL CLUSTER ORCS DEVELOPMENT

Opportunity ID:	192617
Issue Date:	March 26, 2024
Closing Date and Time (Pacific Time):	April 3, 2024 11:00 PM

Submission Delivery

Submissions must be submitted using the following delivery method:

Email submission: Submit a Submission by email. Submissions by email must be submitted to the email address specified below in accordance with the email submission instructions set out in the process rules for the subject RFX. Include the opportunity description and ID in the subject line of the email.

Vivia.DeWolfe@gov.bc.ca

Official Contact

Vivia DeWolfe, Director Finance and Operations
Vivia.DeWolfe@gov.bc.ca

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1. Summary

1.1 Overview

Notice is hereby given that the Ministry of Attorney General, Environmental Appeal Board is contemplating extending a directly awarded contract with Oldenburger Consulting (the “**Supplier**”).

The high-level details of the contemplated contract are generally described below.

This project is to develop and assist with approval of an Operational Records Classification System (ORCS) schedule under the Information Management Act (IMA) (BC 2015 c. 27), for seven tribunals under the Environmental Appeal Board Appeal Tribunal cluster. The seven tribunals include the Environmental Appeal Board (EAB), Forest Appeal Commission (FAC), Energy Resource Appeal Tribunal (ERAT), Skilled Trades BC Appeal Board (STBCAB), Community Care and Assisted Living Appeal Board (CCLALAB), Hospital Appeal Board (HAB), and the Financial Services Tribunal (FST).

1.2 Contract Term and Aggregate Contract Value

The term of the contract is expected to be extended from March 31, 2024 *to March 31, 2025 to assist with the approval of the ORCS.*

The aggregate value of the contract is expected not to exceed, exclusive of applicable taxes \$21,000.

1.3 Rationale for Contemplating a Direct Award

The Province is contemplating a direct award extension with the Supplier for the following reasons: The contractor has many years of experience drafting ORCS for many ministries across the Province of BC. The contractor completed the first phase of a project identifying what is required across the tribunal sector to improve records management. The contractor has the background and experience to develop and assist with the approval process of the ORCS for our seven boards. The original NOI was posted without enough time estimated for the ORCS approval process.

2. Definitions Used in this Notice of Intent

Throughout this Notice of Intent, the following definitions will be used (and the singular is interchangeable with the plural context permitting):

"Addenda" means additional information regarding this NOI, including amendments to the NOI that may be posted on BC Bid. The "Addenda" menu tab is located on the left margin of the specific opportunity in the BC Bid application. Amendments will be noted in the amendment reason section of the "Overview" menu tab located on the left margin of the specific opportunity in the BC Bid application. Suppliers may need to select and set the symbol denoted as ">>" to reveal the menu tab items.

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“Submission” as used in the Submission Declaration Form and within BC Bid and its pop-up advisories related to this NOI has the same meaning as Challenge.

“Submission Declaration Form” means the form so identified and named in the NOI for use with Challenges submitted by email or hard copy delivery if such submission methods are allowed by the NOI.

“Supplier” means the natural person or legal entity that is identified in section 1.1 to this NOI.

“You” and **“Your”** as used in the Submission Declaration Form and any pop-up advisories related to this NOI has the same meaning as Respondent.

3. Notice of Intent Challenge Guidelines

- a) Any Challenge objecting to the NOI is required to be in English and sent to the Official Contact in writing or such Challenge will not be considered.
- b) Challenges to the NOI should be received by the Official Contact before the Closing Date and Time.
- c) The Province reserves the right to disregard any Challenge to an NOI received after the Closing Date and Time.
- d) Challenges to the NOI should provide reasons for the Challenge.
- e) A Submission Declaration Form must accompany any Challenges submitted by email or hard copy.

3.1 Review of Challenges

- a) If the Province receives a Challenge to the NOI before the Closing Date and Time, the Province must assess whether the challenge is justified; and whether a competitive process should be undertaken.
- b) If no Challenges to the NOI are received prior to the Closing Date and Time or no Respondent submits a Challenge that is justified by the Province, the Province may commence contract negotiations with the Supplier for the goods, services and/or construction described in the NOI.

3.3. Enquiries are Made to the Official Contact

Enquiries and any responses providing new information will be recorded and posted to BC Bid as Addenda or otherwise distributed to Respondents. Despite the foregoing, the Province may choose in its sole discretion not to respond, respond in whole or in part, or reformulate enquiries in whole or in part. The Province may in its sole discretion choose whether to post any such enquiries (as reformulated if reformulated) and responses to BC Bid or otherwise distribute to Respondents.

3.4. Ownership of Challenges

Challenges to this NOI become the property of the Province and will be held, subject to the provisions of the *Freedom of Information and Protection of Privacy Act*.

3.5. Respondents Expenses

The Province will not be responsible for any costs or expenses incurred by any Respondent challenging this NOI.

Appendix A: Challenge Form

Document is available for download in the “RFx documents” section for this NOI.

Appendix B: Submission Declaration Form

Document is available for download in the “RFx documents” section for this NOI.



Environmental Appeal Board

Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 387-3464

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Fax: (250) 356-9923

Email: info@bceab.ca

[Address]

[Date]

Re: Your Request for Records dated [Date]

Dear [Name]:

I am writing further to your request for records dated [Date]. I understand that you have requested the following records from the Environmental Appeal Board:

- [List of records]

I have determined that you are entitled to access the following records:

- [list of records]

The records have been redacted to remove information would constitute an unreasonable invasion of the named individuals' personal privacy. **This information includes residential addresses, XXX.** Under section 53 of the Freedom of Information and Protection of Privacy Act, you may apply to the Information and Privacy Commissioner to review my decision to refuse access to those portions of the records.

I have determined that you are not entitled to access to the following records:

- [list of records]

The records to which you have been granted access have been attached electronically. Please do not hesitate to reach out if you have any questions or concerns.

Sincerely,

Darrell Le Houillier

Chair

Environmental Appeal Board