

COMMUNITY CARE and ASSISTED LIVING APPEAL BOARD

RULES for Appeals under the *Community Care and Assisted Living Act* (SBC 2002 c. 75)

Introduction

These rules for appeals to the Community Care and Assisted Living Appeal Board are made under section 11 of the *Administrative Tribunals Act*, SBC 2004, c. 45. They must be read together with:

1. the *Community Care and Assisted Living Act*, SBC 2004, c. 75,
2. sections 1 to 20, 22, 24 to 42, 44, 47(1)(c) and (2), 48 to 55, 57, 58, 60 and 61 of the *Administrative Tribunals Act*, and
3. practice directives issued by the Board under sections 12 and 13 of the *Administrative Tribunals Act*.

Rule 1 - Definitions

1(1) In these rules:

"appellant" means the person bringing an appeal;

"Board" means the Community Care and Assisted Living Appeal Board continued by section 29 of the *Community Care and Assisted Living Act*;

"Director" means to the Director of the Community Care and Assisted Living Appeal Board;

"document" has an extended meaning and includes a book, map, drawing, chart, letter, paper, photograph, film, recording of sound, and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means;

"intervener" means a person the Board allows to participate in an appeal under section 33 of the *Administrative Tribunals Act*;

"participant" means an appellant, respondent or intervener in an appeal;

"party" means an appellant or respondent in an appeal;

"respondent" means the decision-maker whose decision is being appealed.

Rule 2 – Starting an Appeal

2(1) To start an appeal, the appellant must deliver a notice of appeal to the Board and the respondent within 30 days of receiving notification of a decision appealed under section 29(2) of the *Community Care and Assisted Living Act* or within 30 days of the making of a decision appealed under section 29(3) of the *Community Care and Assisted Living Act*.

(2) The notice of appeal must:

- (a) be in writing,
- (b) contain the appellant's contact information,
- (c) identify the decision being appealed, the person who made the decision, the date of the decision and the date the appellant was notified of the decision,
- (d) include a copy of the decision being appealed,
- (e) state why the decision being appealed should be changed and what outcome is being requested, and
- (f) be signed by the appellant or the appellant's lawyer or agent.

(3) If the notice of appeal appears to be deficient, the Board will notify the appellant and allow up to 14 days for the appellant to correct the deficiency.

Rule 3 – Communications with the Board

3(1) Unless the Board directs otherwise, all communications with the Board must be made through the Director of the Board at the following Board office address:

Community Care and Assisted Living Appeal Board

Attention: The Director
4th Floor, 747 Fort Street
Victoria BC V8W 3E9

Mailing Address: PO Box 9425 STN PROV GOVT
Victoria BC V9W 9V1

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

(2) A document may be delivered to the Board office by hand, mail, courier or fax.

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

(4) The hours of operation of the Board office are from 8:30 am to 4:30 pm, Monday through Friday, excluding public holidays.

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

Rule 4 – Representation and Contact Information

4(1) A participant may be represented by a lawyer or other agent.

(2) A participant must provide the Board with contact information consisting of:

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

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

Rule 5 – Delivering Documents

5(1) A participant that delivers a document to the Board must also deliver a copy of the document to each other participant in the appeal in accordance with this rule.

(2) A document may be delivered to a person:

- (a) by leaving a copy of it with the person,
- (b) if the person is a participant, by providing a copy of it in accordance with their contact information, or
- (c) by any other means permitted by the Board that allows proof of receipt.

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

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

(5) A document that is sent by mail is deemed delivered on the fifth day after it is mailed, excluding a Saturday, Sunday or public holiday, unless there is evidence to the contrary.

(6) If it is impractical to deliver a document by leaving a copy with the person, or by providing it in accordance with the person's contact information if they are a participant, the Board may permit an alternate method of delivery to be used including notice by advertisement where necessary.

(7) To apply for authorization to deliver a document by an alternate method of delivery, a participant must deliver a written request to the Board that explains the reasons why it is not feasible to deliver a document to the person by leaving a copy of it with them or by providing it in accordance with the person's contact information if they are a participant.

Rule 6 – Time Requirements

6(1) In calculating time under these rules or in an order or direction of the Board:

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

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

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

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

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

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

Rule 7 – Providing and Certifying the Appeal Record

7(1) The appeal record consists of the decision being appealed, the respondent's reasons for decision and all documentary evidence, reports, policies, legislative provisions and submissions considered by the respondent in making the decision, but it does not include solicitor client privileged communications between the respondent and the respondent's lawyer.

(2) Unless the Board authorizes otherwise, within 21 days after delivery of the notice of appeal the respondent must deliver the appeal record to the Board and to the appellant.

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

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

Rule 8 – Temporary Suspension of the Decision Being Appealed

8(1) To apply for an order temporarily suspending the decision being appealed, a party must deliver a written request to the Board that explains:

- (a) the reason(s) temporary suspension of the decision being appealed is required,
- (b) whether the appeal concerns a serious issue,
- (c) what harm will be incurred if the order is not granted,
- (d) why granting the order would not risk the health or safety of any person in care, and
- (e) whether other parties agree to the order (if known).

(2) The Board will give other parties an opportunity to be heard before granting an application for temporary suspension of the decision being appealed.

Rule 9 – Removing, Adding or Substituting Parties to an Appeal

9(1) On its own initiative or on the application of a person, the Board may remove, add or substitute a person as a party to an appeal.

(2) An application to remove, add or substitute a party to an appeal may be made by delivering a written request to the Board that demonstrates the following apply:

- (a) the person to be removed as a party is not, or has ceased to be, a proper or necessary party to the appeal, or
- (b) the person to be substituted or added as a party is a proper or necessary party to the appeal to ensure that all matters in the appeal are effectually adjudicated.

(3) The Board will give the parties an opportunity to be heard before removing, adding or substituting a person as a party to an appeal.

(4) The Board will not add or substitute a person as an appellant without that person's consent.

Rule 10 – Interveners

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

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

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

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

Rule 11 – Other Applications on Preliminary or Interim Matters

11(1) Other applications for directions or orders on preliminary or interim matters must be made, unless otherwise directed by the Board, by delivering a written request to the Board that explains the reason(s) the direction or order is required and whether other participants agree to it (if known).

(2) Except in extenuating circumstances, the Board will give other participants an opportunity to be heard before granting an application for a direction or order on a preliminary or interim matter.

Rule 12 – Appeal Management

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

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

Rule 13 – Appeal Management Conferences

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

(2) To apply to change the date of a scheduled appeal management conference, a participant must deliver a written request to the Board that explains the reason(s) the change is required and whether other participants agree to it (if known).

(3) Unless the Board authorizes otherwise, all participants or their representatives must attend appeal management conferences.

(4) The Board member or delegate appointed to conduct an appeal management conference may:

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

(5) The Board member or delegate who conducts an appeal management conference may issue a report that includes any recommendations, directions or orders made by the Board member or delegate and the consensus of the participants on any facts, issues or procedural matters on the appeal.

(6) A Board member who conducts an appeal management conference where confidential settlement matters are discussed will not, unless the parties agree, sit on the panel hearing the merits of the appeal.

Rule 14 – Withdrawing or Settling an Appeal

14(1) To withdraw all or part of an appeal, the appellant must deliver written notice of withdrawal to the Board. The appellant may do this at any time before the Board has

made its final decision disposing of the appeal and the Board will order that the appeal or part of it is dismissed.

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

Rule 15 – Summary Dismissal of an Appeal

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

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

(2) Before summarily dismissing an appeal, on its own initiative or on the application of a party, the Board will give the parties an opportunity to be heard.

Rule 16 – Hearing of an Appeal

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

(2) An application to adjourn a scheduled hearing date must be made at the earliest opportunity and may be made:

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

(3) Except in extenuating circumstances, the Board will give other participants an opportunity to be heard before granting an application to adjourn a scheduled hearing date.

(4) In considering whether to grant an application to adjourn a scheduled hearing date, the Board will have regard generally to the following factors:

- (a) the reason(s) an adjournment is required,
- (b) whether an adjournment will help resolve all or part of the appeal,
- (c) whether, and the extent to which, prejudice will result if an adjournment is granted or refused,
- (d) whether other participants agree to an adjournment,
- (e) the impact that an adjournment would have on the progress of the appeal,
- (f) the number, length and causes of any previous delays in the progress of the appeal,
- (g) whether an adjournment is necessary to ensure a fair hearing of the appeal, and
- (h) the public interest in the efficient and speedy conduct of appeals.

(5) The Board will generally require the appellant's case to be presented first, followed by the respondent's case, and the appellant will have the final opportunity of reply.

(6) The Board will generally require oral evidence to be given under oath or affirmation.

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

(8) The Board will generally arrange for the recording of an oral hearing of an appeal by a qualified verbatim recorder. Subject to restriction of access under the *Administrative Tribunals Act* or these rules, a participant may, at the participant's expense, order a transcript of all or part of the recording.

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

Rule 17 – Witnesses

17(1) To summon a witness to attend to give evidence at the hearing of an appeal or to produce a document or other thing that is in the witness's possession or control, a participant must complete a summons in Form 1 and deliver it to the witness.

(2) Unless the Board authorizes otherwise, a summons to a witness must be delivered to the witness at least 7 days before the witness is required to attend to give evidence at the hearing of an appeal or to produce a document or other thing that is in the witness's possession or control.

(3) At the time the summons is delivered, the participant summoning the witness must offer the witness reasonable estimated travelling expenses in advance of the required attendance.

(4) If a person will attend to give evidence or to produce a document or other thing voluntarily, a summons is not necessary.

Rule 18 – Amending or Cancelling a Summons to a Witness

18(1) A witness summoned may apply to the Board to amend the terms of, or to cancel, the summons by delivering a written request to the Board that explains the reason(s) the summons should be cancelled or its terms should be amended.

(2) An application to amend the terms of, or to cancel, a summons to a witness must also be delivered to the participant summoning the witness.

(3) Except in extenuating circumstances, the Board will give the participant summoning the witness an opportunity to be heard before amending the terms of, or cancelling, a summons to a witness.

Rule 19 – Expert Evidence

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

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

(2) Unless the Board authorizes, or the other participants agree otherwise, a participant who submits the evidence of an expert must make the expert available for cross-examination at the hearing of the appeal.

Rule 20 – Access and Restriction of Access to Hearings and Documents

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

- (a) the desirability of avoiding disclosure in the interests of any person or participant affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public, or
- (b) it is not practicable to hold the hearing in a manner that is open to the public.

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

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

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

(4) The Board will not provide access to the following:

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

Rule 21 – Non-compliance with Board Process

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

- (a) manage, hear and dispose of the appeal without the participation of that participant including, if that participant is the appellant, summary dismissal of the appeal without hearing evidence, and
- (b) make any other order or direction that the Board considers fair.

For further information regarding the Board rules, practice directives or to obtain a copy of the Board process guide, contact the Community Care and Assisted Living Appeal Board office at 1-250-387-3464.

Community Care and Assisted Living Appeal Board
Community Care and Assisted Living Act,
SBC 2002, c. 75

Appellant:

Respondent:

Summons To A Witness

To: Name: _____

Address: _____

Take Notice that pursuant to section 29(1.2) of the *Community Care and Assisted Living Act* and section 34(1) of the *Administrative Tribunals Act* you are required to attend to testify as a witness at the time, date and place set out below.

And Further Take Notice that you are required to bring with you any document or other thing in your possession or control relating to this proceeding:

Time: _____

Date: _____
 [Day] [Month] [Year]

Place: _____

Dated: _____

Signed: _____
 Party [or party's solicitor]

Important: The following information must also be included with the summons to a witness.

Notice to the Person Delivering the Summons

Unless the Board authorizes otherwise, a summons to a witness must be delivered to the witness at least 7 days before the witness is required to attend to give evidence at a hearing of the appeal or to produce a document or other thing.

At the time the summons is delivered, the party summoning the witness must offer the witness reasonable estimated travelling expenses in advance of the required attendance.

If a person will attend to give evidence or produce a document or other thing voluntarily, a summons is not necessary.

Reference: Rule 17, Community Care and Assisted Living Appeal Board Rules

Notice to the Witness

The witness summoned must comply with the summons, unless the Board has amended or cancelled it before the date the witness is required to attend to testify or provide a document or other thing.

The witness summoned may apply to the Board to amend the terms of, or to cancel, the summons by delivering a written request to the Board that explains the reason(s) the summons should be cancelled or its terms should be amended.

An application to amend the terms of, or to cancel, a summons to a witness must also be delivered to the party summoning the witness.

Except in extenuating circumstances, the Board will give the party summoning the witness an opportunity to be heard before amending the terms of, or cancelling, a summons to a witness.

If the witness summoned fails to comply with the summons, the witness may be directed to comply and is liable to be committed for contempt by the Supreme Court.

Reference: Rule 18, Community Care and Assisted Living Appeal Board Rules
Sections 34 and 49, *Administrative Tribunals Act*

The Community Care and Assisted Living Appeal Board may be contacted through the Director of the Board at the Board office:

Community Care and Assisted Living Appeal Board

Attention: The Director
4th Floor, 747 Fort Street
Victoria BC V8W 3E9

Mailing Address: PO Box 9425 STN PROV GOVT
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