

Alberta Law Enforcement Review Board

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Citizen/Police Officer Appeals

This is a general information document designed to assist you in understanding the role of the LERB. It is not intended to replace the Alberta Police Act, nor does it address every aspect of the appeal process. However, it may answer many of your questions and better enable you to pursue your appeal.

Role and Mandate

The Law Enforcement Review Board is an independent quasi-judicial body established under the Alberta *Police Act* (R.S.A. 2000, Chapter P-17).

The principal activity of the Board is to hear appeals from citizens who have complained about a police officer's actions and are not satisfied with the disposition of their complaint. Police officers who have been the subject of discipline arising out of a complaint and who themselves feel aggrieved with the decision of their chief of police may also appeal to the Board. The Board provides a forum for both citizens and police officers separate and apart from the police service involved.

Board Membership

The Board is comprised of a minimum of three members from the public appointed by the Lieutenant Governor in Council. The Board Chair must be a member of the Law Society of Alberta. Members of the Board are appointed for a term not exceeding three years and are eligible for reappointment. The Board members represent a broad range of experience in the community. Profiles of the members are available on the Board website.

Right to Appeal

The citizen must first file a complaint with the police service that employs the officer. The police service will conduct an investigation to determine whether or not the conduct of the complained about officer constitutes misconduct. The matter may also proceed to a disciplinary hearing before a presiding officer. The chief of police or presiding officer will issue a decision. The citizen and officer are advised of the outcome of the investigation/disciplinary hearing and if there is a right of appeal to the Board.

Filing a Notice of Appeal

A citizen or police officer (the "appellant") may appeal by sending a written notice to the Board Secretary. The notice should set out the following:

- The appellant's full name;
- The appellant's contact information including address, telephone number and electronic mail address (if available);
- The name and contact information of the appellant's agent (if applicable);
- With respect to complaints made against a police officer; the date of the alleged conduct (if known), the identification of the police officer (if known) and a description of the incident that gave rise to the complaint; and
- Details about why the appellant feels that the decision of the chief of police or the presiding officer was unreasonable.

Appeals must be filed within 30 days from the time the police service provided their decision to the aggrieved person.

Appeal Process

The Board will typically acknowledge an appeal within one week. The Board is required, within 30 days upon receipt of a notice of appeal, to conduct a review of the notice of appeal and the information that was that was before the Chief of Police when he made his initial decision (for matters that did not proceed to a disciplinary hearing) or a copy of the record of the proceedings before the Presiding Officer (in matters that proceeded to a disciplinary hearing) (the "record").

The Board will request the record from the Police Service to be provided to the Board for its review. The appellant will also be provided with a copy of the Record. Upon review of the record, the Board may:

- dismiss the matter if in the opinion of the Board the appeal is frivolous, vexatious or made in bad faith;
- make a decision based on the review of the record that was before the Chief of Police or Presiding Officer without conducting a hearing; or
- schedule a hearing of the appeal.

In the event that the Board determines that a hearing will not be scheduled, the Board will seek written submissions from the parties on the merits of the appeal prior to making their decision.

Matters Proceeding to a Hearing

In the event the Board determines that a hearing will be scheduled, the process will proceed as outlined below.

Application for Additional Evidence

If a party wants the Board to rely on information above and beyond the record, they must make an application to the Board. The Board may have the ability to permit additional evidence, but only in appropriate circumstances.

If an application to admit additional evidence is made, the Board will advise the parties of the process and deadlines associated with filing the application. Written submissions may be requested from the parties and a date will be scheduled to hear oral submissions on the application from the parties. The Board will then determine what additional evidence (if any) will be permitted.

In general, for the Board to permit additional evidence it would have to meet the following criteria:

- The evidence was not available at the time the chief of police or presiding officer made his decision;
- The evidence must be relevant to a decisive issue under appeal;
- The evidence must be credible; and
- The evidence could reasonably change the decision previously reached.

If no application for additional evidence is made, the appeal will proceed on the basis of the record and submissions from the parties.

Hearing Date

The Board will schedule a date to hear any additional evidence (if the Board determined through an application to permit additional evidence) and oral submissions/final argument from the parties on the review.

Your Role at the Hearing

If the Board determined that additional evidence is to be permitted, it is your responsibility to present this evidence to the Board. This evidence may be in the form of witnesses providing testimony, documents, photographs or videos.

The parties will also be provided with the opportunity to make submissions/final argument. These submissions should focus on why you believe that the decision of the chief of police or presiding officer is unreasonable. You should point the Board to the portions of the record or the evidence that you think will convince the Board of your position.

The table below outlines the types of questions that can come before the Board and the standard of review the Board is to apply. A *standard of review* is the amount of *deference* (meaning how much the Board should defer to the Decision of the Chief of Police or the Presiding Officer) given by the Board in reviewing the decision of the Chief of Police or the Presiding Officer.

Category	Type of Question	Standard of Review
1. Factual Disputes	The issue is essentially whether something happened or how it happened.	The Board will afford the most deference to the decision of the chief of police or the presiding officer. The Board will not substitute it's own view unless it finds the decision to be unreasonable.
2. Standards of Conduct Disputes	The issue is whether the conduct of the officer was within the acceptable standard.	The Board will afford less deference to the decision of the chief and the presiding Officer.
3. Questions Regarding the Integrity of the Process	The real issue is whether the investigative processing of the complaint has been undermined or corrupted in some way.	The Board will afford the least amount of deference to the decision of the chief and the presiding officer.

Board Findings/Powers

The Board will issue a written decision for each appeal. **Decisions are public and are posted on the Board's website and on the Canadian Legal Information Institute's Website.** The powers of the Board are set out in the *Alberta Police Act*. After hearing an appeal, the Board may:

Cases where <u>no</u> disciplinary hearing was held by the respective police service.	Cases where a disciplinary hearing was held by the respective police service.
<ul style="list-style-type: none"> ▪ Direct the chief of police to hold a disciplinary hearing; ▪ Direct the chief of police to lay a charge under the <i>Regulation</i>; ▪ Direct the chief of police to have the matter investigated again; ▪ Affirm the decision of the chief of police; or ▪ Take any other action the Board considers appropriate. 	<ul style="list-style-type: none"> ▪ Allow the appeal; ▪ Vary the decision of the chief of police; ▪ Affirm or vary the punishment imposed on the officer; ▪ Dismiss the appeal; or ▪ Take any other action the Board considers appropriate.

The Board cannot award damages/compensation, withdraw criminal charges laid by the police or set aside convictions.

A decision of the Board may be appealed to the Alberta Court of Appeal on a question of law only. Leave of the Court is required for an appeal to the Alberta Court of Appeal.

Further Information

Hearings are open to public unless the Board determines otherwise. Media may be present to report on the proceedings.

Hearings are typically held in the jurisdiction in which the incident occurred. The Board has its own hearing facility in Edmonton and may use Federal or Provincial courtrooms in other jurisdictions. The length of a hearing depends on the complexity of the matter. Generally hearings will take 1 day to complete.

A person appealing to the Board is entitled to represent themselves, or seek representation by a lawyer or an agent. The Board office does not become involved in making arrangements for legal counsel.

On average, appeals are expected to take anywhere from 3-12 months to conclude.

Resources

www.adminlawbc.ca – information on how to prepare for a tribunal hearing

Appeal Checklist

- File Notice of Appeal with the LERB within 30 days of receiving a disposition.
 - Wait for a letter from the Board advising you if the Board has:
 - Dismissed your appeal; if in the opinion of the Board the appeal is frivolous, vexatious or made in bad faith or;
 - Made a decision based on the review of the record without conducting a hearing; or
 - Scheduled a hearing of the appeal.
- If a hearing will not be scheduled, the Board will seek written submissions from the parties on the merits of the appeal prior to making their decision. If a hearing has been scheduled, continue to follow the process below.
- Review the information you received from the Police Service and advise the Board if you want to make an application to admit additional evidence.
 - If an application for additional evidence is made you may be required to provide written particulars about your application to the other parties to the appeal and the Board. You will then appear before the Board to provide oral submissions in relation to your application.
 - On the hearing date, arrive early so that you will be relaxed and have sufficient time to organize yourself. Bring a paper and pen to take notes. You will present any evidence (if the Board determined that additional evidence would be permitted) and provide oral submissions/final argument on your appeal.

Law Enforcement Review Board Process Chart

