

**ALBERTA LAW ENFORCEMENT REVIEW BOARD**



***APPEAL RULES***

*Effective Date: June 15, 2020*

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## **PART 1 – GENERAL**

### **1 – Purpose of these Rules**

- 1.1 The purpose of these rules is to explain the policies and procedures to be followed for reviews and appeals before the Law Enforcement Review Board (the “Board”).

An information sheet about the Board and how appeals are conducted can be found on the Board’s website at: [www.alberta.ca/law-enforcement-review-board.aspx](http://www.alberta.ca/law-enforcement-review-board.aspx). If you ask the Board for a copy of the information sheet, it will be emailed or mailed to you.

- 1.2 The Board may publish additional information, including directions, to assist the parties in understanding and using these rules. In case of conflict with other publications, these rules apply.

These rules set out the steps the parties must take in the appeal process and how to complete them. Some rules have a brief explanation after them. These are for assistance only and do not change the meaning of the rules.

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*The Board has final say on all policy and procedures in an appeal.*

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### **2 – Definitions**

#### ***Definitions***

- 2.1 The following definitions explain what certain words mean in these rules:
- (a) “Act” means the *Police Act*;
  - (b) “address for delivery” means the mailing address, email address or fax number of the Board and the address provided by a party;
  - (c) “adjournment application” means an application to postpone or delay an appeal hearing or an application hearing;
  - (d) “appeal” means an appeal or request for review to the Board under the Act or under the *Peace Officer Act*;
  - (e) “appeal file” means the file maintained by the Board for an appeal, including the contents of that file, but does not include any notes, draft decisions or communications among members and staff;

- (f) “appellant” means the person who has appealed a decision made under the Act or the *Peace Officer Act*;
- (g) “applicant” means a person who makes a written application to the Board;
- (h) “application” means a party’s written request that the Board decide an issue before the final hearing on the merits of the appeal is held;
- (i) “authority or authorities” means previous cases decided by the Court or the Board or academic articles that a party relies on to support their arguments in the appeal;
- (j) “Board” means the Law Enforcement Review Board established under the Act;
- (k) “business day” means Monday through Friday, but does not include statutory holidays;
- (l) “business hours” means between 8:15 a.m. and 4:30 p.m. Alberta time, on business days;
- (m) “chair” means the member of the Board who has been appointed the chairperson in accordance with the Act;
- (n) “complainant” means someone who made a complaint under Part 5 of the Act;
- (o) “communication” includes a notice of appeal or any other notice, letter, email, written document, application or submission provided in an appeal;
- (p) “costs” means an amount of money the Board orders a party to pay to any another party;
- (q) “frivolous, vexatious or made in bad faith” means that an appeal is not realistic, has no chance of success and is bound to fail;
- (r) “direction” means instructions the Board gives a party that must be followed;
- (s) “dismiss” means to deny an application made to the Board or to end the appeal and close the appeal file;
- (t) “grounds of appeal” means the reasons why the appeal is being filed, or why the decision is being appealed, for example, that there was an inadequate investigation or that the decision was unreasonable;
- (u) “hearing” or “heard” means an oral hearing (“in-person hearing”) with the parties present to speak to the appeal, or a hearing based on written submissions and the record only (an “in-writing hearing”);
- (v) “initial review decision” also called a “streaming review”, means the written decision that the Board makes after it receives the notice of appeal and the police records, as to how the appeal should proceed;
- (w) “member” means:
  - (i) the chair or presiding member;
  - (ii) a member of the Board; or
  - (iii) a panel of members;
- (x) “notice”, “notify” and similar terms refer to the delivery of documents in writing as provided for in these rules;
- (y) “notice of appeal” means a written notice of appeal or a written request for review, in the form of a letter, email or other written document, delivered to the Board to start an appeal or review;

- (z) “order” means an order, direction or other decision of the Board which the parties must follow;
- (aa) “PDF” means Portable Document File format, in an electronic form, that is readable using Adobe Reader version 10.0 or higher; or such other format as the Board may require;
- (bb) “party” means:
  - (i) an appellant;
  - (ii) a police officer in the appeal who was the subject of the complaint or disciplinary charges under the Act which led to the decision being appealed;
  - (iii) the chief of police and the police service whose decision is being appealed;
  - (iv) the police commission whose decision is being appealed;
  - (v) the chief of a police service where the appeal is from a disciplinary hearing after a decision by that chief;
  - (vi) a peace officer in an appeal who was the subject of proceedings under the *Peace Officer Act*; or
  - (vii) the director of law enforcement under the *Peace Officer Act* where a decision under the *Peace Officer Act* is appealed;
- (cc) “record” means the record of the investigation or the hearing leading up to the decision being appealed or reviewed, including:
  - (i) in an appeal from a written decision of a chief: all of the recorded information that was considered by the chief or was available to the chief in making the decision, including but not limited to: all investigative reports, officer notes, operational records, memos, letters, statements, the recordings and transcripts of the interviews with appellants, respondents and witnesses, audio and digital recordings and transcripts if any, any relevant policies, directives or standard operating procedures the chief was aware of, or that were available to the chief when he made his decision; or

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*The record is all the information that was looked at  
to make a decision about the complaint.*

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- (ii) in an appeal where a disciplinary hearing was held: the decision of the presiding officer; the transcript of the hearing; all exhibits entered into evidence in the hearing, including but not limited to any policies, agreed statements of fact, directives or standard operating procedures relevant to the issues in the hearing and the decision, any written arguments submitted to the presiding officer.

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*When a disciplinary hearing was held all official documents, evidence, and transcripts of the hearing are part of the record.*

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- (iii) the record that was before the commission; and
  - (iv) any additional records the Board determines should be provided.
- (dd) “respondent” means a party opposing an application or opposing the appeal, which usually means the police officer (s) complained of and/or the Chief of Police;
  - (ee) “rules” means these policies and procedures;
  - (ff) “transcript” means the typed out, word-for-word recording of an in-person interview or hearing.

### ***Interpretation of the rules***

2.2 To interpret these rules:

- (a) a word that is not listed in the definitions above has the meaning it is given in the *Police Act* or the *Police Service Regulation*, as the case may be;
- (b) a word that is not set out in the definitions above, or in the *Police Act* or *Police Service Regulation*, but is defined in the *Interpretation Act* has the meaning set out in that Act;
- (c) any other words have their ordinary and usual meaning; and
- (d) including always means “including but not limited to”.

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*“Including but not limited to” means the items listed, but there may be more items that apply.*

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***Board assistance with rules***

2.3 Any party may contact the Board for help in understanding or interpreting these rules.

**3 – Following the Rules (Policies and Procedures)**

***Application of these rules***

3.1 All parties must follow these rules unless the Board directs otherwise.

***Exercise of Board powers***

3.2 The Board may take steps under these rules either on its own or on the application of a party.

***Board flexibility***

3.3 The Board may decide a party does not have to follow a specific rule or may change the rules in an appeal for its own reasons, or on the application of a party, including to change time limits or grant extensions. The Board will decide if a change in the rules is fair and reasonable and may provide written reasons for its decision to make the change.

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*The Board may decide to change how the rules apply to a party in an appeal or a party may ask the Board for a rule change and the Board will decide.*

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***Failure to follow the rules or Board directions***

3.4 If a party fails to:  
(a) answer communications from the Board or from another party; or  
(b) pursue the appeal; or  
(c) follow the appeal rules; or  
(d) take the steps required in the time required,

the Board may postpone a hearing or dismiss the application or appeal, and may award costs against that party or representative who failed to follow the rules.

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*If a person does not follow these rules, the Board can decide against them in an application or dismiss their appeal entirely.*

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### ***Failure to appear at appeal hearing***

- 3.5 The Board may proceed with an application hearing or an appeal hearing if a party had written notice but fails to attend without a good reason. If the Board proceeds with the hearing, it may make an order or give a decision including the following:
- (a) Where a party fails to attend an application hearing, the Board may allow or dismiss the application; or
  - (b) where a party fails to attend the appeal hearing, the Board may allow or dismiss the appeal.

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*If a person does not show up for their hearing without a good reason, the Board can choose to dismiss the appeal or decide against them.*

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### ***Failure to follow the rules***

- 3.6 Failure to follow the specific rules exactly does not automatically mean an appeal will be dismissed (example: where there is technically a breach of the rules or a problem with the documents, but the party made his or her best efforts to follow the rules). The Board and/or the other parties may waive or object to the failure of a party to follow the rules by notice in writing. The Board will decide if it will allow the application or appeal to proceed and may give the parties directions.

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*If someone did try to follow the rules, but was not able to, they should explain the reason to the Board in writing, so that their appeal may still be heard.*

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## **4 – Parties’ Representatives**

### ***Parties may be represented***

- 4.1 A party may represent himself or herself before the Board, or may be represented by another person, including a lawyer or agent. All steps and actions taken by the representative in the appeal, and all steps a representative omitted or failed to do, are considered by the Board to be the acts or omissions of that party. The consequences of the representative’s actions may affect the party’s appeal.

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*A person can represent themselves for their appeal, or have another person represent them as their agent, or as their lawyer. Any actions done by the person’s representative in the appeal are the same as if the person did them.*

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- 4.2 If a party has a representative, the representative must provide the Board with confirmation that he/she is authorized to act as the representative. The representative is then authorized to deliver or receive all communications with the Board and other parties on behalf of the represented party.

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*A person’s lawyer or agent must have written proof that they are allowed to represent that person.*

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### ***Withdrawal or change of representative***

- 4.3 If a representative stops acting for the party or is replaced, the party must notify the Board and the other parties in writing of the new contact information for the party or the new representative, as soon as possible, in accordance with the communications rules.

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*If a person decides a lawyer or agent is no longer representing them, they must tell the Board as soon as possible and update their contact information.*

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## **PART 2 – COMMUNICATIONS**

### **5 – Contact Information for the Parties**

#### ***Contact information for a party***

- 5.1 Each party must provide their new contact information to the Board and the other parties immediately if any of the contact information changes.

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*Parties must keep their contact information up-to-date.*

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### **6 – Communicating with the Board**

#### ***Communicating with the Board and all parties.***

- 6.1 All communications to the Board must also be delivered to the other parties or representatives in the appeal at the same time. All parties (or their representatives, if any) are to be provided with copies of all communications to or from the Board after the appeal is filed. The communications are to be delivered by regular mail, registered mail, courier, process server, in person, by email, or by fax.

The Board may permit or require a different method of delivery, if delivery by one of these methods is not possible or if delivery fails.

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*Each party must provide all documents and letters in the appeal to the Board and all parties at the same time. If none of the methods listed are possible other methods may be allowed.*

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#### ***How to deliver communications to the Board***

- 6.2 A party may deliver a communication to the Board by email, mail, fax, courier, process server or by personally attending the Board office during officer hours. Contact information for the Board is:

Law Enforcement Review Board  
1502, 10025-102 A Avenue  
Edmonton, AB T5J 2Z2  
Fax: 780-422-4782  
Email: [lerb@gov.ab.ca](mailto:lerb@gov.ab.ca)

***Delivery to Board outside business hours***

- 6.3 A communication delivered to the Board after business hours on a business day or on a non-business day is considered to have been delivered to the Board on the next business day.
- 6.4 If the date by which a party must deliver a communication to the Board falls on a weekend or on a holiday, it must be delivered no later than the next business day.

***Proof of delivery***

- 6.5 If the Board requests proof of delivery of a communication, the sender may provide one of the following to the Board:
- (a) proof from the courier or other person who delivered the communication, setting out the time, date and method of delivery (receipt, sworn statement or affidavit);
  - (b) a copy of a Canada Post ‘delivery confirmation’ of the registered mail;
  - (c) proof that the communication was successfully sent by email (with the Board having discretion to require an email ‘read receipt’ or other proof of receipt satisfactory to the Board); or
  - (d) a fax transmittal sheet confirming that the fax was successfully sent.

***Date of delivery***

- 6.6 Subject to these rules, if a communication is:
- (a) mailed by regular mail - it is considered to have been delivered seven (7) days after the date on which it was posted with Canada Post, with the party to provide proof of mailing;
  - (b) mailed by registered mail - it is considered to have been delivered on the date shown on the Canada Post ‘delivery confirmation’;
  - (c) By email or fax - on the date emailed, faxed, or is acknowledged ‘received’.

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*A party may have to provide written proof they sent a document on time.*

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## **Part 3 – HOW TO APPEAL**

### **7 – How to Appeal**

#### ***How to appeal***

- 7.1 Pursuant to the Act, an appeal must be started by delivering a written ‘notice of appeal’ to the Board no later than 30 days after receiving the decision being appealed. The notice of appeal can be in the form of a letter or an email.

A review of a police commission decision or the cancellation of a peace officer’s appointment must be started by delivering a written ‘request for review’ to the Board no later than 30 days after receiving the decision being reviewed. The request for review can be in the form of a letter or an email.

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*Complainants only have 30 days to file a notice of appeal or request for review with the Board. This is a strict time limit.*

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- 7.2 The notice of appeal or request for review must contain the following:
- (a) the full name of the person who is appealing;
  - (b) the address for delivery, telephone number and email address, if available, for the person appealing;
  - (c) if that person has a representative, the representative’s address for delivery, telephone number and email address;
  - (d) the name of the police service involved;
  - (e) the names of the respondent officers;
  - (f) the date of the decision being appealed;
  - (g) a copy of the decision being appealed; and
  - (h) the grounds of appeal (why the decision being appealed is not reasonable and should be overturned by the Board).

#### ***Extending the time limit for appealing***

- 7.3 The time limitation for filing a notice of appeal under section 48 of the *Police Act* or section 20 of the *Peace Officer Act* can only be extended under limited circumstances, and only for 30 days, if the Board agrees there are good reasons to grant an extension.

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*The 30-day limit to appeal a decision can only be extended in very limited circumstances.*

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***Board may require more information***

- 7.4 If the Board determines that a notice of appeal is incomplete:
- (a) the Board may ask the appellant to provide additional information by a specific date so the appeal can proceed. If the additional information is not delivered by the specific date, the Board may refuse to accept the notice of appeal and the appeal may be dismissed; or
  - (b) the Board, however, may choose to accept the notice of appeal or request for review, although it is incomplete, if there are good reasons for doing so. The Board may provide further directions to complete the required information during the appeal process.

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*A notice of appeal is not official until all required information is delivered to the Board. If the information is not given in time, the Board can dismiss the appeal.*

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**8 – Board’s Initial Review of Appeals**

***Board will decide to accept or reject notice of appeal***

- 8.1 The Board will review the notice of appeal to determine if it has the jurisdiction (authority under the *Police Act*) to hear the appeal. If it does not have jurisdiction to hear the appeal or part of it, the Board will notify the person in writing that it cannot accept all or part of the appeal and it will be rejected. The Board may give the person an opportunity to be heard before the Board makes this decision. If the whole appeal is rejected the appeal file will be closed.

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*The Board may decide it cannot accept an appeal under the Act but may give the appellant a chance to better explain the appeal before it is rejected.*

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### ***Initial review of appeal***

- 8.2 If the Board accepts the notice of appeal, it will conduct an initial review of the notice of appeal and the record to determine how the appeal should proceed. The Board may do one of the following:
- (a) dismiss the appeal by notice in writing to the parties, if the Board is of the opinion that it is “frivolous, vexatious or made in bad faith” (see definition above);
  - (b) make a decision respecting the appeal and notify the parties in writing of the decision, without conducting a hearing; or
  - (c) schedule a hearing of the appeal in-person or in writing, with notice to the parties, and advise them what the next steps and deadlines are in the appeal process.

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*The Board sends its initial decision to the parties: either that the appeal may be dismissed because it is likely to fail; that it will make a decision on the appeal without a hearing; or that it will hold a hearing of the appeal. The Board’s letter will set out the next steps the parties must take in the appeal.*

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### ***Amending grounds of appeal***

- 8.3 After an appeal is filed, an appellant may make changes to the grounds of appeal contained in the notice of appeal, by notice in writing, within 14 days of receiving the Board’s initial review decision. The amendments may include additional grounds of appeal, the removal of grounds of appeal, or the clarification of grounds of appeal.
- 8.4 The Board may permit amendments of a notice of appeal after the 14-day time limit, if all parties agree or at the Board’s discretion.



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*Additional grounds of appeal, if any, must be added within 14 days of the Board’s initial review decision being sent to the parties.*

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### ***Withdrawing of an appeal***

- 8.5 An appellant may cancel or withdraw an appeal, in whole or in part, at any time during the appeal process by notifying the Board in writing. The Board will notify all of the other parties if an appeal is withdrawn and the appeal file will be closed.

### ***Case management***

- 8.6 The Board may, on a party’s written request or on its own, decide to hold a case management meeting for the appeal. It will notify all of the parties of the date, time and location of the case management meeting. All of the parties or their representatives will attend the meeting.

The case management meeting may cover the following:

- (a) the issues to be decided in the appeal and the positions of the parties;
- (b) the content of the record and the production of any additional records;
- (c) the length of the appeal hearing;
- (d) the scheduling of hearing dates;
- (e) whether the hearing should be held in public or in private;
- (f) whether the record should be sealed;
- (g) whether alternative dispute resolution (mediation) or settlement is possible;
- (h) any matters that a party reasonably requests be the subject of a case management meeting; and
- (i) any other matters the Board deems necessary for the appeal to proceed fairly and effectively.

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*If the appeal is complicated, the Board may have a meeting with the parties to discuss procedures.*

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## **PART 4 – PRODUCTION OF THE RECORD**

### **9 – Delivery of the Record by a Police Service or Commission**

#### ***Time for delivery of the record***

- 9.1 If the Board accepts the notice of appeal, the Board will immediately deliver a copy of it to the police service or commission involved and direct that the records be produced to the Board and all of the parties.
- 9.2 The police service or commission must deliver an electronic copy of the record to the Board and the other parties within 14 days of receipt of the notice of appeal.
- 9.3 The police service or commission may apply for more time to deliver the record, because of the size of the record, redactions (to black out/delete information) or if special circumstances exist. The Board may give the police service an extension of time for delivery of the record without hearing from other parties, if appropriate.
- 9.4 The police service must deliver a copy of the record to each of the other parties on the same day as it delivers the record to the Board. The police service may deliver copies to the other parties by email or on a CD or DVD. The police service or commission must provide a cover letter to the parties, explaining how to open the electronic records on a computer and explaining any redactions.

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*Once the appeal is accepted, the police service or commission must provide the record, which is all the documents related to the appeal, to the parties and the Board.*

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#### ***Format and organization of the record***

- 9.5 The police service or commission must produce the record in an electronic, readable format. (i.e., in a PDF document Adobe). Each document within the record must be separated by a PDF tab or bookmark. The PDF record must be searchable by words or other terms.
- 9.6 Any video or audio recordings must be produced in a format accessible to the Board and the other parties.

- 9.7 Each page of the record must be numbered, with page numbers clearly marked on each page beginning with page one.
- 9.8 The record must include a table of contents, with page numbering separate from the page numbering of the record itself (for example, i, ii). The table of contents will include: the description of each document, the document’s date, the page number on which that document begins and a PDF tab or bookmark for the document.
- 9.9 Under the *Police Act*, the police service is required to give complainants updates on the status of the investigation into their complaints, by letter every 45 days, until the decision is delivered. The police service does not need to include these letters in the record, unless the Board requires them to be included.
- 9.10 If the police service or commission need clarification of the rules on producing the record, they may contact the Board office for assistance.

***How the record is to be delivered***

- 9.11 The police service or commission must deliver the record to the Board, as an attachment to an email addressed to [lerb@gov.ab.ca](mailto:lerb@gov.ab.ca) (and not to any other email address). The email subject line must state “APPEAL RECORD”, followed by the name of the police service, the appellant’s name, and then any police service file number.

If a police service has not been able to, despite reasonable efforts to do so, successfully deliver the record to the Board by email, it may instead deliver the record to the Board on a password protected CD and/or DVD.

- 9.12 The PDF record emailed or delivered to the Board must be protected by a password established by the Board and communicated to the police service or commission for delivery of records by that police service. The Board will change passwords from time to time and advise the police service.
- 9.13 If a party asks that the record be produced in a different format, (for example a printed copy) the police service must deliver the record to the party in the requested format within a reasonable time and confirm to the Board that it has done so, unless this is not possible. In such circumstances a reasonable alternative should be found, in consultation with the Board.

## **10 – Removal of Information from Records**

10.1 In this part, “redact”, “redaction”, “redacted” means the removal of information from a document or record, by deleting it, whether through physical or technical means, so that it cannot be read.

### ***Authorization to redact information from the record***

10.2 The Board may authorize a police service or another party to redact information from the record, with the Board being guided by the following sections of the *Freedom of Information and Protection of Privacy Act* under:

- (a) section 17 (personal information the disclosure of which would be an unreasonable invasion of an individual’s personal privacy);
- (b) section 18 (disclosure which would harm someone’s safety or health, or public safety);
- (c) section 20 (disclosure which may be harmful to law enforcement); or
- (d) section 27 (privileged information, for example: information between a lawyer and a client).

10.3 This section does not limit the Board’s authority to authorize redactions on other grounds or on its own motion, where the Board determines that it is in the public interest to do so. This section also applies to any application by a party to redact information from the Board’s published decision.

Examples of information that may be removed include names of witnesses, birthdates, addresses, information about minor children, and other sensitive information.

### ***Redaction (Removal) of information when the record is delivered***

10.4 A police service or commission may redact information from the record and submit the record with the redactions to the Board for consideration. The police service must clearly indicate in the record where information has been redacted. This should be done in a letter or email accompanying the record and delivered to the Board and the parties.

10.5 The police service or commission’s letter must describe the basis for each redaction, the section and the subsection, if applicable, that applies to the redaction, and the page numbers where information has been redacted.

- 10.6 If another party objects to redactions, or if the Board considers it necessary, the Board may direct the police service or commission to deliver the redacted information to the Board for review and may request written submissions giving legal authorities for each redaction or evidence substantiating the redactions or both.

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*If the police service removes any part of the record, they must explain to the Board the legal reasons why they did this. The Board will decide if this is acceptable.*

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- 10.7 The police service or commission must provide the written submissions about the redactions within the time limit the Board directs. The police service or commission may apply to the Board if it needs more time because of the volume of the record or if special circumstances exist. The Board in its discretion may extend the time for delivery without hearing from the other parties.

***Later redaction (removal) of information***

- 10.8 A party may apply to the Board for the redaction of information from the record after it has been delivered, but this must be done before the start of the appeal hearing.

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*If a party wants something removed from the record, they have to ask the Board to do so before the appeal hearing starts.*

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- 10.9 The party applying for late redactions must deliver written submissions with reference to the page numbers where the proposed information is located and give reasons for each requested redaction, including the legal basis for each redaction and any supporting evidence. This should be done in a letter or email delivered to the Board and the parties.
- 10.10 The Board may give the other parties the opportunity to make submissions about the request for redactions before making its decision.

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*Any requests to have information removed must be in writing, identify what specific information should be removed, and why.*

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***Appeal documents and records are confidential***

10.11 Until the final appeal decision is released, no party may use or produce any documents, records or information from another party to the appeal in any other proceedings, including before the courts, other boards, tribunals or commissions. This is known as an “implied undertaking” not to use the record. The purpose of this undertaking is to keep the record confidential until the appeal is concluded.

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*All information in the appeal has to be kept secret and is only  
for the eyes of the involved parties, until the final appeal  
decision is made.*

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## **PART 5 – APPLICATIONS**

### **11 – Applications**

- 11.1 When the Board issues its initial review decision, it will give the parties the opportunity to advise if they intend to make any applications to the Board for an order or directions in the appeal.

Examples of applications that can be made to the Board include:

- (i) a dismissal of the appeal because the appeal is frivolous, vexatious or made in bad faith;
- (ii) that additional evidence be added to the record;
- (iii) for ‘sealing’ of the record;
- (iv) that an appeal or part of it should be heard in the absence of the public;
- (v) for further disclosure of information from a police service or commission;
- (vi) to allow another party to intervene in the appeal;
- (vii) to be allowed to skip steps in the appeal process or to do them in a different way;
- (viii) to postpone the appeal or to put the appeal on hold pending other proceedings; and
- (ix) costs against a party or representative.

#### ***How to make an application***

- 11.2 The applicant must deliver written notice of the application to the Board and to the other parties. This can be in the form of a letter delivered as instructed in these rules. The notice must describe the order or remedy that the applicant wants, and the grounds or reasons for it. This includes a description of any evidence and arguments the party is relying on for the application.

#### ***Applications to admit additional evidence***

- 11.3 In addition to the notice of application, a party who has applied to admit additional evidence on appeal must deliver to the Board and to the other parties:
- (a) a sworn statement (affidavit or statutory declaration) describing the additional evidence, where it came from, who authored it, and the date of the document. A copy of the additional evidence should be attached to the sworn statement; and
  - (b) a written submission as to why the evidence should be admitted on appeal.

***Time limits for applications***

- 11.4 Notice of any applications must be in writing and delivered to the Board no later than 14 days after the date of the Board’s initial review decision.
- 11.5 If a party has good reasons for making an application to the Board after the 14-day time limit, he or she may deliver a written request to the Board for an extension of time, setting out the extra time needed and the reasons for it. The Board may grant or refuse the extension and accept or reject the application if it is not filed on time.

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*Once the parties get the initial review decision, applications to the Board must be made in writing within 14 days.*

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***Hearing of applications***

- 11.6 The Board will decide whether it will hear the application at an “in-person” hearing or in an “in-writing” hearing and will advise the parties in writing.
- 11.7 If all parties are represented by counsel, the application will be conducted in writing unless the Board directs an in-person hearing. More complicated applications may be heard in-person.

***Delivery of written submissions for the application***

- 11.8 If an application is to be heard at an “in-person hearing”, the Board will notify the parties in writing of the date, time and location of the hearing.
- 11.9 Whether the Board decides that there will be an in-person hearing or an in-writing hearing, the Board’s confirming letter will set out the following deadlines:
- (a) the date by which the applicant’s written submissions must be delivered;
  - (b) the date by which any responding written submissions must be delivered; and
  - (c) the date by which the applicant may reply in writing to the responding written submissions, which will be within 7 days after delivery of the responding written submissions.



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*These written submissions are a party’s written explanation of what they are asking the Board to do or not do in the application and why. They must be delivered to the Board by the deadline given.*

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***In-person hearings for applications***

11.10 All in-person hearings are recorded. The Board will give the parties information and instructions about the process at the start of the hearing. The parties will each be given an opportunity to make oral arguments (submissions) to the Board. The Board may ask the parties questions.

***Decisions on applications***

11.11 The Board will issue a written decision on the application after the in-person hearing or in-writing hearing is complete. The decision may be delivered orally at the in-person hearing, if one was held. If it is delivered at the hearing, written reasons will still be sent to the parties after the hearing.

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*Although the Board may sometimes say what its decision is at the end of an in-person hearing, it will always put its decision in writing.*

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## **PART 6 – POSTPONING A HEARING**

### **12 – Postponing a hearing**

#### ***How to apply to postpone a hearing***

- 12.1 A party may apply to the Board to postpone (adjourn) an application hearing or appeal hearing. Postponement requests must be made in writing and the party applying must explain why the postponement is necessary. Reasons should be beyond the applicant's control.
- 12.2 The Board may postpone the hearing where it is fair and reasonable to all parties to do so. The Board will consider the relevant factors including:
- (a) the length of the delay and the impact on the other parties;
  - (b) whether the other parties consent to the delay;
  - (c) the number of previous postponements requested and by whom;
  - (d) any cost to the other parties;
  - (e) medical reasons of a party or representative. The Board may require a medical certificate before it considers the application;
  - (f) other circumstances, including a representative's scheduling conflict that cannot reasonably be resolved; and
  - (g) whether the applicant made reasonable efforts to avoid the need for the delay.

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*A party may ask to postpone a hearing if there is a good reason.*

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#### ***Opportunity to be heard***

- 12.3 The Board may give any party who does not consent to the delay an opportunity to make submissions on the application.

#### ***Postponement by the Board***

- 12.4 The Board may decide to postpone the date and time for an application or appeal hearing, or change its location, for its own reasons. The Board will consult with the parties if it can, before doing so, and will deliver written notice of the change to the parties as soon as possible.

## **PART 7 – APPEAL HEARINGS**

### **13 – Appeal Hearings**

#### ***Notice of in-person appeal hearing***

- 13.1 The Board will send a notice of hearing to the parties telling them the date, time and location of the hearing. The notice will be sent by registered mail.

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*The Board will tell the parties when and where the appeal hearing will take place.*

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- 13.2 In the Notice of Hearing, the Board will set out the following deadlines:
- (a) the date by which the appellant’s written submissions must be delivered;
  - (b) the date by which any responding written submissions by the respondents must be delivered; and
  - (c) the date by which the appellant may reply in writing to the respondent’s written submissions, which will be within 7 days after delivery of the respondent’s submissions.
- 13.3 The written submissions must be delivered to the Board and the other parties by the dates the Board directs.

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*The parties must deliver their written submissions to the Board by the deadlines given.*

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#### ***Written submissions – organization, format and style***

- 13.4 Each party’s written submissions should set out the party’s position and arguments for each ground of appeal. The submissions should be specific, detailed and in plain language. The Board may set limits on the length of submissions in a particular appeal.
- 13.5 If a party wishes to be excused from having to provide written submissions, they must submit a request in writing to the Board explaining the reason and the Board will consider

whether to excuse the party from having to provide them. The Board may consider whether the party is unrepresented, has a language barrier, or other reasons.

- 13.6 Copies of any authorities a party wants the Board to consider must be submitted as separate documents, with an index, attached to the submissions.
- 13.7 Only the leading court or other authorities should be produced and relied upon in the submissions. Long quotations from authorities should be avoided. Key parts should be highlighted or underlined. Past Board decisions may be relied upon but need not be reproduced.

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*Court authorities and Board decisions can be found  
online at [www.canlii.org](http://www.canlii.org)*

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- 13.8 Submissions must be typewritten. The Board may permit a party who is not represented to provide handwritten submissions, but these must be easy to read.
- 13.9 Typed submissions should be spaced at 1.5 lines between each line of text.
- 13.10 Each page must be numbered, and each paragraph must be numbered. The page numbers for any references to the record should be provided.

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*Written submissions in the appeal are a party's  
written reasons for arguing the decision appealed  
from was either reasonable or unreasonable.*

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### ***Conducting an appeal hearing***

- 13.11 All hearings are recorded. The Board will give the parties information and instructions at the start of the hearing. The Board will consider any preliminary matters that need to be addressed before the parties make their oral submissions.
- 13.12 The parties will each be given an opportunity to make oral arguments (submissions) to the Board. The appellant will make submissions first, followed by the respondents and

the Chief. The appellant will get an opportunity to reply to anything new arising from the respondents' and Chief's submissions at the hearing.

- 13.13 The Board may ask the parties questions. The Board may take short breaks during the hearing. The Board may give directions during or at the end of the hearing.

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*The Board runs the hearing and gives each party the opportunity to make their arguments.*

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### ***Conclusion of hearings***

- 13.14 The date on which an appeal hearing or application is concluded is decided as follows:
- (a) in-writing hearings are considered to be completed on the date that the Board has received all of the written submissions and documents in the appeal, and the Board will determine that date for the purposes of the *Police Act*; and
  - (b) in-person hearings are considered to be completed on the date that the Board brings the hearing to a close (usually the hearing date). If the Board requests further documents or submissions to be delivered after the hearing, the date the final document or submission is received is the date on which the hearing is considered to be completed for the purposes of the *Police Act*.

### ***Final appeal decisions***

- 13.15 The Board will issue a written decision about the appeal after the in-person hearing or in-writing hearing is complete. The decision may be delivered orally at the in-person hearing, if one was held. If it is delivered at the hearing, written reasons will still be sent to the parties after the hearing.
- 13.16 The *Police Act* states that decisions are to be delivered within 60 days of the completion of the appeal hearing. If the Board cannot complete the decision within 60 days, an extension may be given.

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*Although the Board may sometimes say what its decision is at the end of an in-person hearing, it will always put its decision in writing.*

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***Transcripts of proceedings***

13.17 The Board records all in-person hearings, including those conducted using conference calling or webcasting. If a party requests a transcript of a hearing, the Board will provide the recording to a transcription service who shall bill the requesting party directly for producing the transcript. The requesting party must pay the transcription service the cost of producing the transcript directly.

***Costs***

13.18 The Board may award costs against a party or representative in the appeal pursuant to section 20(4) of the *Police Act*, upon its own motion or on an application by a party, where it determines that costs are appropriate.

## **PART 8 – OTHER MATTERS**

### **14 – Request for Assistance or Accommodation**

#### ***Request for other accommodation***

- 14.1 The Board will take reasonable steps to assist and accommodate a party who has advised the Board that he or she has a hearing, visual or other impairment or disability.

#### ***Request for translator or interpreter***

- 14.2 Upon request by a party, the Board may provide a translator or interpreter for the hearing at the Board's expense. The request for an interpreter should be made as soon as the party is advised of the hearing date so that an interpreter can be found beforehand.

### **15 – Electronic Hearings**

#### ***How in-person hearings may be held***

- 15.1 The Board may, if it considers it fair, efficient or necessary, direct that case management, an application or appeal hearing be held using an electronic method, including telephone conference, video conference or webcasting, so long as the method used will permit all parties to participate fully, hear and be heard by each other and the Board.

### **16 – Public Nature of Appeal Proceedings**

#### ***Hearings are public unless otherwise ordered***

- 16.1 Unless the Board or a court orders otherwise, members of the public may attend the Board's hearings.

#### ***Publication of Board decisions***

- 16.2 Board decisions will identify the parties in an appeal, unless their identity or other information is redacted (protected), upon application by a party or on the Board's motion. The Board may protect a party's identity if the nature of the evidence in the appeal is sensitive or if minors may be affected.
- 16.3 Board decisions are published on [www.canlii.org](http://www.canlii.org) after they are released to the parties.

## **17 – Sealing of the Record**

- 17.1 A party may request that the entire appeal record be sealed, or the Board may consider doing so on its own motion, if there is information on the record that should not be made public: because it is sensitive in nature, because it involves minors, or because it would be against the public interest for the contents to be made public.

The record may be sealed in whole or in part at any time during the appeal process, but before the Board has issued its final appeal decision. This means that the sealed record or sealed part of the record becomes confidential and its contents cannot be disclosed to any other person or the public by the Board or any party to the appeal at any time.

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*If a record is sealed, none of its contents can  
be shared with anyone, even after the appeal is final.*

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## **18 – Retention of Appeal Files & Records**

- 18.1 In this part, “appeal file” means the file maintained by the Board for the purpose of conducting an appeal including the following:
- (a) correspondence and documents relating to the Board’s administration of an appeal;
  - (b) copy of the original complaint to the police service;
  - (c) a copy of the record;
  - (d) copy of the decision that was appealed to the Board;
  - (e) the notice of appeal;
  - (f) copy of applications and written submissions of the parties on applications filed with the Board;
  - (g) copy of written submissions of the parties for the final appeal hearing;
  - (h) original digital recording of preliminary application hearings and final hearings conducted by the Board; and
  - (i) original copy of the Board’s written appeal decision and any decisions respecting preliminary applications;

but does not include any emails, notes, draft decisions or communications of Board members.



***Retention of appeal files***

- 18.2 The Board is required to keep appeal files in accordance with government rules, (the retention and disposition schedule set out and approved by the Alberta Records Management Committee).

***Retention of the record***

- 18.3 The record will be kept by the Board for nine months following the conclusion of an appeal or at the conclusion of any related legal proceedings (*example*, Court of Appeal, judicial review).
- 18.4 Nine months after the appeal period has expired or at the conclusion of any related legal proceedings, the Board will return the record to the police service or commission and the Board will not retain any copies of it.

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*The Board keeps the appeal record for nine months after the appeal is concluded.*

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***Implementation of the Appeal Rules***

- 18.5 These Appeal Rules come into effect immediately and replace the former “Appeal Policies and Procedures”, dated January 1, 2017 and all Practice Directives. The Board may amend the Appeal Rules from time to time. Amendments will be published on the Board’s website and provided to parties and representatives in active appeals.