

## **Appeal Procedures Handbook**

*For licensees appealing an administrative penalty imposed by the Registrar of Passenger Transportation.*

**This package contains information about the Passenger Transportation Board, the legislative requirements it is required to follow, and the rules and procedures regarding appeals.**

Related Materials:

- Notice of Appeal Form
- Request to Suspend Administrative Penalties

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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 Board's practices and procedures only. An official version of the legislation may be obtained from Crown Publications.

## Introduction

The Passenger Transportation Board (the “Board”) is established under section 6 of the *Passenger Transportation Act, S.B.C. 2004, c. 39*. It is a quasi-judicial tribunal with statutory authority to (a) make decisions on applications for taxis, limousines and small vans and inter-city buses and (b) hear appeals regarding administrative penalties imposed by the Registrar of Passenger Transportation.

The formal requirements of the appeal process are set out in sections 51 and 52 of the *Passenger Transportation Act* (the Act). Board powers may be found Part 3 of the Act and in sections 2 to 10, 26, 30, 31, 41, 42, 44, 57, 58 and 61 the *Administrative Tribunals Act, S.B.C. 2004, c. 45*.

This manual is designed to make the appeal process open and understandable to the appellant and other interested persons. It contains information about the Board, the legislated procedures the Board is required to follow and the rules and policies the Board has adopted to fill in the procedural gaps left by the legislation.

Those involved in the appeal process can expect the Board to follow legislated requirements. The Board will follow its rules and policies unless special circumstances warrant a departure from the rules or policies.

The Board will continue to refine and, if necessary, change its policies over time. Any changes made to this handbook will be published on the Board’s website.

The Board will make every effort to process appeals and make decisions fairly and efficiently. Your attention to the procedures and policies outlined in this Manual will assist the Board in achieving this goal.

## **The Passenger Transportation Board**

There are 5 part-time Board members. This includes the Chair. Board members are appointed by Cabinet following a merit based process. Cabinet will consult with the Chair on the appointment of members.

The chair is responsible for the effective management and operation of the tribunal and the organization and allocation of work among its members.

### **Panels of the Board**

The chair of the Board may organize the tribunal into panels, comprised of one or more members. If the chair organizes a panel of more than one member, the chair must designate one member as chair of the panel. A panel of the Board has the authority of Board. It may perform the powers and duties of Board.

Panel decisions are Board decisions. The decision of a majority of panel members is a decision of the Board. In the case of a tie, the decision of the panel chair governs. If a panel member is unable to complete the member's duties, the remaining members of that panel, with consent of the chair of the Board, may continue to hear and decide the appeal. The vacancy does not cancel the proceeding.

If a panel is made up of one member and that member is unable to complete the member's duties, the chair of the tribunal, with the consent of all parties to the application, may organize a new panel to continue to hear and decide the matter on terms agreed to by the parties. In these circumstances, the vacancy does not cancel the proceeding.

### **Correspondence (Communicating) with the Board**

To ensure that the appeal process is kept open and fair to the parties, any correspondence directed to the Board in relation to an appeal must be sent to the Board office and be copied to all other parties to the appeal. Correspondence should be addressed to the Director & Secretary to the Board or other staff at the Board office, and not to Board members.

Board 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, unless that member puts all of the other parties on notice and gives them an opportunity to participate. Nor will a member discuss his or her reasons for a decision. Once a decision is given in an appeal, the decision "speaks for itself".

### **Board Staff and Office**

The Board has a small full-time staff consisting of a Director & Secretary, a Policy and Communication Manager, an Appeals and Operations Coordinator and a Research and Administrative Assistant. The office provides application managements services, legal

information, research support, financial and administrative services, training and communications support for the Board.

Any questions regarding an appeal or a practice or procedure of the Board should be directed to this office.

### **Board Contact Information**

<b>Mailing Address:</b>	PO Box 9850 STN PROV GOVT Victoria, British Columbia, V8W 9T5
<b>Street Address:</b>	202-940 Blanshard Street Victoria, British Columbia
<b>Phone:</b>	250-953-3777
<b>Facsimile:</b>	250-953-3788
<b>Email:</b>	<a href="mailto:ptboard@gov.bc.ca">ptboard@gov.bc.ca</a>
<b>Web:</b>	<a href="http://www.ptboard.bc.ca">www.ptboard.bc.ca</a>

## The Appeal Process

### A. Filing an Appeal

#### What can be Appealed?

Section 50 of the *Passenger Transportation Act* gives the Board the power to hear appeals from decisions of the Registrar of Passenger Transportation to impose an administrative penalty on a licensee.

The Registrar may impose the following types of administrative penalties on licensees:

- (a) suspend a licence;
- (b) prohibit the licensee from doing one or more of the following:
  - (i) transferring the licence to another person;
  - (ii) amending the licence;
  - (iii) replacing the licence;
  - (iv) renewing the licence;
  - (v) obtaining a new licence;
- (c) order the licensee to stop operating one or more motor vehicles under the authority of a licence;
- (d) order that the licensee's licence be cancelled;
- (e) make an order imposing an administrative fine of up to \$1500 on the licensee.

The Registrar has developed an Administrative Penalty Framework to guide the implementation of these penalties. This framework is available on the Registrar's website at <http://www.th.gov.bc.ca>

#### What can the Board do on an Appeal?

The board can rescind or confirm an administrative penalty imposed by the Registrar. Only the Registrar can reduce a penalty. Any application to reduce a penalty must be made directly to the Registrar.

#### Can the Board make Decisions on the Charter of Rights and Freedom and other Constitutional Issues?

The Board does not have jurisdiction to decide constitutional matters. If a constitutional question is raised with respect to an appeal, the Board will proceed with the appeal, without addressing the constitutional issues, unless an appellant makes application to a Court in the nature of a prohibition to prevent the Board from considering the application. In such a case, the Board may adjourn the proceedings pending a decision from the court.



## Who can Appeal?

The Passenger Transportation Act says that a licensee may appeal a decision of the Registrar to impose an administrative penalty. (A lawyer or agent may act on behalf of a licensee.)

## Who Else may be a Party to the Appeal?

The Registrar or a representative of the Registrar will be the respondent in an appeal.

## How to Appeal

To appeal a decision, a licensee must file a notice of appeal with the Board. Section 50(3) of the *Passenger Transportation Act* states that an appeal must be in writing (or in another form acceptable to the Board) and certain things **must** be included in a notice of appeal for it to be accepted. The licensee may use the "Notice of Appeal" form available on the Board's website or he or she may provide a letter or other document with the required information as outlined below. If the appellant is unable to provide a written notice of appeal, he or she should contact the Board to discuss other arrangements.

The notice of appeal must:

- (a) identify the decision that is being appealed,
- (b) state why the decision should be changed,
- (c) state the outcome requested,
- (d) contain the name, address and telephone number of the appellant, and, if the appellant has an agent to act on the appellant's behalf in respect of the appeal, include the full name of the agent and a telephone number at which the agent may be contacted during normal business hours,
- (e) include an address for delivery of any notices in respect of the appeal, and
- (f) be signed by the appellant or the appellant's agent.

The notice of appeal must be accompanied by payment of the \$150 fee.

A copy of the decision that is being appealed should be included with the notice of appeal.

A notice may be given to the board:

- by ordinary mail
- by personal delivery
- by courier to the street address of the Board,
- by facsimile to the Board's facsimile number but only if the document, including cover sheet, does not exceed 30 pages, or if Board staff consent to the faxing of a longer document,
- by registered or express mail to the post office box address of the Board, or

- by electronic mail, to the Board's or Board staff's e-mail address only after the person providing the notice or written response has confirmed with the Board staff that such transmissions can be received and replied to.

If the appeal is not commenced in accordance with the *Passenger Transportation Act* the Board does not have jurisdiction to hear the appeal, regardless of the merits.

## **Appeal Fees**

For a notice of appeal to be complete, it must include the appeal fee of \$150.00. This fee is required by section 50(4) of the *Passenger Transportation Act* and cannot be waived by the Board. The fee may be paid by cheque, money order or bank draft made payable to the Minister of Finance.

If the notice of appeal is delivered by facsimile, the appeal fee must be forwarded with a copy of the original notice of appeal for the appeal to be accepted as complete. Until the fee is received, the notice of appeal is incomplete or deficient.

## **Time Limit for Filing the Appeal**

According to section 50(1) of the *Passenger Transportation Act*, every appeal to the Board must be filed not more than 30 days after the licensee's receipt of notice from the Registrar of the imposition of an administrative penalty.

The board may extend the time to file a notice of appeal if the board is satisfied that

- (a) special circumstances existed that precluded the filing of a notice of appeal within the 30 day time period and
- (b) an injustice would otherwise result.

If a licensee is filing an appeal after the 30 day time limit has expired, it should provide the Board with an explanation of any special circumstances that may have existed and describe the injustice that would result if the Board dismissed the appeal.

The Board would then review the licensee's claims and decide on whether the appeal should proceed. If the Board is satisfied that special circumstances exist and that it would be unjust to bar the appeal.

## **Incomplete (Deficient) Notice of Appeal**

If the notice of appeal does not contain the required information and the required fee, it is considered incomplete.

Section 50(5) of the Act enables to Board to allow licensees a reasonable time to complete any deficiencies in notices of appeal or to make the fee payment.

Generally, in these situations, the Board will give an appellant 10 business days to complete the notice of appeal or pay the \$150 fee. An appellant will be advised that if it does not meet the 10 day deadline, the appeal may be dismissed.

## **Dismissal of an Appeal**

Section 19 of the *Passenger Transportation Act* says that the Board may, at any time, dismiss an appeal as having been abandoned if a licensee does not comply with an order of the Board or with the Rules of Practice and Procedure of the Board. Before dismissing an appeal, the Board must give notice to an appellant of the Board's intentions.

Section 31 of the *Administrative Tribunals Act* gives the Board the power to, at any time, summarily dismiss an appeal if:

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

Before summarily dismissing an appeal under section 31 above, the Board must notify the appellant and give it an opportunity to make submissions. If the Board summarily dismisses an appeal, it will notify the appellant and registrar and provide reasons for its decision.

## **Representatives/Legal Counsel**

A party does not need to be represented by a lawyer in an appeal. Parties may represent themselves (i.e., present their own cases) or have someone else (e.g., a non-lawyer) act as their spokesperson. The Board will make every effort to keep the process open and accessible to parties that are not represented by a lawyer.

### **B. Board Procedure Following Receipt of Notice of Appeal**

#### **Confirmation of Notice of Appeal**

Board staff will advise appellants when a notice of appeal is complete. This signals that the Board will begin processing the appeal. The next step is for the Board to send a copy of the Notice of Appeal and any documents received from the appellant to the Registrar.

The Registrar will be asked to provide any documents related to the appeal to the Board and the appellant. The Registrar does not need to send duplicates of documents forwarded by the Board. The Board will give the Registrar 10 business days to provide this information or to notify the Board and the appellant that there is no additional

information. At this point, the Board is not requesting any submissions or comments from the Registrar regarding the appeal.

## **Requests to Suspend Administrative Penalties**

A person who has filed a **complete** Notice of Appeal **within the required timelines** may request that the Board suspend an administrative penalty, other than a fine, imposed by the Registrar until the Board makes a decision on the appeal. The Board cannot suspend administrative fines.

An appellant who is requesting a suspension of an administrative penalty, except for a fine, must complete a "Request to Suspend Administrative Penalties" form. The appellant must:

- provide reasons for its request,
- identify any hardships resulting from the Registrar's order, and
- indicate whether (and why) there is any urgency to the request.

**Note:** A request to suspend administrative penalties will not be processed until the Board has confirmed that the notice of appeal is complete and the \$150 fee has been received.

When a Request to Suspend Administrative Penalties form is received by the Board, the Board Chair will appoint a panel to decide this request. The same panel may or may not decide the appeal.

The Board will copy the Registrar on any Request to Suspend Administrative Penalties form and accompanying documents. Unless the appellant specifies that there is an urgent situation the Registrar will have **5 business days** to provide written comments to the Board, with a copy to the appellant. The appellant will have **10 business days** to respond in writing to the Board, unless the Registrar supports the request. If the Registrar supports the request, the Board will proceed to make its decision.

If the Request to Suspend is an urgent request, the Board may waive these procedural requirements and timelines. An urgent situation may be one where there is the potential of immediate and unintended harm to a licensee or his or her family or an employee or agent of the licensee as a result of the imposition of the administrative penalty. The Board will determine if the situation is urgent based on the information provided with the Request to Suspend.

The Board may arrange a teleconference with the appellant and respondent before making a decision on a request to suspend administrative penalties.

## **Appointment of an Appeal Panel**

After the Board receives the relevant documents from the Registrar, the Board chair will appoint an appeal panel. The appeal panel will decide on what type of appeal hearing he or she will conduct.

## **Type of Appeal Hearing (written or oral)**

An appeal may be conducted by way of a “file review” based on written submissions, an oral hearing, including a teleconference or video conference, or a combination of both written submissions and an oral hearing. In most cases, a file review will be conducted.

## **Combining Appeals**

If the Board is dealing with appeals that involve the same or similar questions of fact, law or policy, section 14 of the Passenger Transportation Act enables the Board to combine proceedings, conduct proceedings at the same time, conduct those proceedings one after the other or stay one or more of the proceedings until it makes a decision on one of them.

The Board will notify all parties if it decides to combine appeals and provide parties with an opportunity to make submissions to the Board if they do not agree with the combining of appeals.

## Nature of Hearings

Appeal “hearings” may be in the form of a “file review”, i.e. the Board reviews written material provided by the appellant and registrar and makes a decision. Or, the Board may hold an oral hearing. These may be either in person or by teleconference, videoconference or some other form of electronic hearing. In-person hearings will be open to the public. File review hearings or teleconference or video hearings may not be open to the public if it is not practical to do so. Decisions on appeals are public.

### **Role of Precedent (previous decisions of the Board)**

Although the Board 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 Board may indicate how the Board members will view particular types of cases, as a matter of law, each case must be decided 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”.

#### **A. Written Hearing Procedure**

##### **Scheduling Written Submissions**

If the Board decides that an oral hearing is not required to decide the issues fairly, it will conduct a file review on the basis of written submissions.

Normally, hearings by written submission will be conducted in cases where credibility is not a significant factor in an 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 Board determines that the appeal can be heard fairly by way of written submissions, it will provide the parties with a submission schedule as outlined below. In making the schedule, the Board will ensure that each the appellant and the Registrar will have an opportunity to comment on the other’s submissions. The appellant will have the final comment. The submissions will normally be scheduled to proceed in the following order.

The timelines start from when the Board receives the Registrar’s material on the appeal and the Chair appoints a panel who then decides to proceed by way of written submission.

Party & Type of Submission	Timeline
<ul style="list-style-type: none"> <li>• <i>Appellant</i> to provide additional submissions based on information received from the Registrar or to notify the Board and Registrar that he or she has no further submissions.</li> </ul>	10 business days
<ul style="list-style-type: none"> <li>• <i>Registrar</i> to provide the Board and appellant with submissions regarding the appeal.</li> </ul>	10 business days
<ul style="list-style-type: none"> <li>• <i>Appellant</i> to provide final comments to the Board and the Registrar.</li> </ul>	10 business days

The Registrar will not normally respond to the appellant’s final comments, unless the appellant includes new, material information which the Board determines that the Registrar must have an opportunity to comment upon. In such cases, the Board would request that the Registrar provide comment by a specific date and then give the appellant a time period in which to provide final comments.

All submissions must be delivered to the Board office by the dates specified. Submissions must be copied to the other parties as well. Once the deadlines have expired for making submissions, the Board will review the materials and make its decision on the appeal.

### **Extension of Time to Make Submissions**

If a party is not able to deliver its submissions by the date specified by the Board, the party can request an extension of time to file its written submissions. The request should be made in writing and prior to the specified deadline. The request should include the following information:

- (a) the reasons for extension;
- (b) the length of the extension; and
- (c) whether the other parties to the appeal consent to the extension.

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

In deciding whether to grant an extension, the Board will consider the adequacy of the reasons given for the extension and any prejudice to the other parties. The Board may grant an extension for a lesser timeframe than requested.

If an extension of time is granted to one party, the submission schedule for the other parties will be similarly extended. The Board will inform all parties of the revised schedule, in writing.

## **Failure to File Submissions**

If the **appellant** fails to deliver its written submissions by the specified date, the Board may consider the appeal to be abandoned.

If the Registrar fails to deliver written submissions by the specified date, the Board may make a decision without hearing further from the Registrar.

## **Content of Submissions**

If an appeal is conducted by written submissions, the parties are required to present their **entire** cases in writing. This means that all evidence (which includes all means of proof including correspondence, affidavits, reports, etc.), legal authorities and argument that the party wants the Board to consider must be included in the submissions. Where there is more than one evidentiary document or legal authority provided with the written submission, the documents and authorities should be numbered consecutively and the number should be referenced, where applicable, in the written text.

The appellant's written submissions should contain all evidence and argument in support of the grounds for appeal and explain why the decision that has been appealed should be different (i.e. changed). The Registrar's submissions should provide all evidence and argument in support of the decision being appealed and explain why the appeal should be dismissed.

Prior to making a decision, the Board will consider each party's submissions, weigh the evidence provided and make a decision.

## **Additional Information Requested by the Board**

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.

## **File Review to an Oral Hearing**

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



## B. Oral Hearing Procedure

### Scheduling an Oral Hearing

Where a panel decides that an appeal will be conducted by full oral hearing, the Board will set a date, time and location of the hearing. Prior to setting a date, the Board will contact the appellant and Registrar regarding their availability and a reasonable attempt will be made to accommodate the parties' scheduling needs. However, where there is a need to expedite a hearing or where the parties cannot agree on a specific date or location, the Board may set the date and location for a hearing without further consultation with the parties.

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 Board. Hearings are often held in meeting or conference rooms in hotels. Oral hearings are open to the public.

### Oral Hearings that Follow a File Review

If the oral hearing is called after a file review, the information accumulated as part of the file review will form part of the hearing material. The Board may direct that the oral hearing address specific issues related to an appeal. Additionally, parties must provide to the Board and each other **10 business days** before the scheduled date of the appeal:

- the names of the people the appellant or respondent intends to call as witnesses at the hearing
- copies of other documentary evidence that parties wish to introduce as evidence at the hearing
- any authority supporting the appellant's or respondent's position

### Oral Hearings without a File Review

#### Statement of Points

To facilitate identification of the main issues and arguments in an appeal and ensure the hearing proceeds in an efficient and expeditious fashion, the Board will send a letter to the parties asking for a Statement of Points (i.e., summary of each party's case) and the documents that the parties will be referring to and relying upon during the hearing.

The Board will establish a schedule for an exchange of documents. Typically, the Board will ask the appellant(s) to deliver its Statement of Points and its documents that it will introduce into evidence to the Board and Registrar at least **15 business days** prior to the start of the hearing. The respondent will typically be asked to deliver its respective Statement of Points and documents that it will introduce into evidence to the Board and appellant at least **7 business days** prior to the start of the hearing. The Board may alter the schedule if the circumstances warrant doing so.

The Board will ask for the following information to be contained in the Statement of Points:

- (a) The appellant should outline:
  - (i) the substance of the appellant's objections to the decision of the registrar to impose an administrative penalty;
  - (ii) the arguments that the appellant will present at the hearing;
  - (iii) any legal authority or precedent supporting the appellant's position; and
  - (iv) the names of the people that the appellant intends to call as witnesses at the hearing.
- (b) The respondent should outline:
  - (i) the substance of the respondent's objections to the appeal;
  - (ii) the arguments that the respondent will present at the hearing;
  - (iii) any legal authority or precedent supporting the respondent's position; and
  - (iv) the names of the people that the respondent intends to call as witnesses at the hearing.

Where a party has not provided the Board with a Statement of Points or other documents prior to the hearing, the panel chair may continue the proceedings and make a decision based on the evidence before it, or dismiss the application or appeal as having been abandoned.

### Documents

With their Statement of Points, parties are requested to disclose all relevant documents to the Board and the Registrar in advance of the hearing so that all parties will be prepared. "Documents" include correspondence, reports, articles, photographs, maps, charts and any other materials (e.g., legislation other than the *Passenger Transportation Act* and policies other than the Board's) that may be referred to or relied upon at the hearing.

Where there is more than one document provided, the documents should be numbered consecutively.

The schedule for exchanging documents gives maximum response times. Earlier response times are permissible. The Board 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. In particular, the respondent is encouraged to provide the appellant with access to copies of the documents, and relevant portions of the legislation, policies and guidelines upon which the respondent relied to reach the decision being appealed.

## **C. Oral Hearings - Generally**

### **Failure or Refusal to Produce Documents before a Hearing**

If a party refuses to produce a document or other thing that is admissible and relevant to the appeal, the Board may make an order requiring a person to produce for the board a document or other thing that is admissible in an appeal. If the document or thing is still not produced, the Board may apply to the Supreme Court for an order requiring production of documents.

Failure or refusal to produce documents prior to the hearing may result in delays and, possibly, an adjournment of the hearing.

If a party produces a document for the first time at the hearing, the Board may refuse to let the document in as evidence. If the Board lets the document in as evidence, that party is responsible for providing sufficient copies for the other parties, the panel members and the hearing officer. If a document is allowed in as evidence, the panel may direct a break to allow either the appellant or respondent to review the document or it may adjourn the hearing briefly.

Documents entered into evidence at the hearing will be marked as an exhibit to the hearing and, subject to any direction of the board, will be public documents.

### **Books of Documents and Legal Authorities**

Parties should refrain from photocopying a legal authority or document already provided to the Board 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 Board's decision on the issues raised in the appeal.

### **Appeal Management Conferences**

The Board may, on its own initiative or at the request of any of the parties to the appeal, schedule an appeal management conference. An appeal management conference will usually be conducted by telephone. Often the appeal panel chair leads the appeal management conference; however, any Board member may chair an appeal management conference.

These conferences provide the parties 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.

Some matters that may be discussed at a pre-hearing conference include:

- defining and simplifying the issues to be determined at the hearing;
- identification of witnesses;
- arranging for the exchange of documents;
- admission of facts relevant to the hearing and consented to by the parties;

- admission of any evidence relevant to the hearing and consented to by the parties;
- setting of hearing dates, timelines, scheduling of witnesses, etc.;
- determination of the day to day conduct of the hearing;
- determination of a date for further pre-hearing conferences prior to the hearing; and
- resolution of the appeal.

## **Witnesses**

Arranging for the attendance of witnesses, production of documents and other evidence at a hearing must be performed by the parties. It is up to the parties to ask people to voluntarily attend a hearing, give evidence, and/or provide certain documents.

If a proposed witness refuses to attend a hearing voluntarily or refuses to testify, a party may ask the Board to direct a witness' attendance. Any such request should be made in writing to the Board office, and should include the following information:

- (a) the name and address of the witness;
- (b) the reasons why the person's attendance at the hearing is required; and
- (c) the attempts made to have the witness **voluntarily** attend the hearing and/or provide the documents or things.

Where sufficient detail is not provided in the request, the Board may ask for additional information.

In deciding whether to direct a witness to attend, the Board will consider whether the party has requested voluntary attendance/compliance before making the request to the Board, whether the information sought to be obtained through this person is relevant to the appeal, whether that person is reasonably likely to be able to supply the information, and any other factors that the Board considers relevant.

If the direction is granted, the party requesting the witness' attendance will be responsible for serving a copy of the Board's order on the witness within a reasonable time before the witness is required to appear.

A person (witness) who is subject to an order for appearance may apply to the Board to have the order reviewed. The application may be made before or during the hearing. If the Board is satisfied that the evidence sought from the person is not relevant, is protected by a privilege at law or the person is not able to supply the evidence sought, the Board may cancel or vary its order to appear.

Where a person fails to comply with an order to appear, the Board may apply to the Supreme Court for an order directing the person to comply with the Board's order.

## **Adjournment of the Hearing**

All parties to an appeal are entitled to a hearing of the appeal in a timely fashion. The Board may adjourn a hearing on its own motion or if it is shown to the satisfaction of

the Board that an adjournment is required. Section 13 of the Passenger Transportation Act requires the Board to reflect on the following when considering an adjournment:

- the reason for the adjournment;
- whether an adjournment would cause unreasonable delay;
- the impact of refusing the adjournment on the applicant or appellant;
- the impact of the adjournment on the public interest.

The Board can consider other relevant factors in addition to the above.

A request for an adjournment should be made promptly and in writing. The request should include the following information:

- (a) the reasons for the request;
- (b) the length of the proposed postponement (specify the next available date);  
and
- (c) whether the other party to the appeal consent to the postponement.

## **D. 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.

### **Record of the Hearing**

Board hearings are not recorded. If a participant wants an official written transcript of the proceeding, he or she must, at least two weeks before the date of the hearing, make a request to the Board and identify: the type of transcription that will be used, who will be providing the transcription and their qualifications, and other proceedings in which the transcription service provider has been used. If the Board is satisfied that the type of transcription is accurate and comprehensive and the person providing the transcription services is qualified and reputable, then the Board may permit him or her to transcribe the hearings. Participants requesting transcription services are responsible for payment of this service. The Board and any participant may obtain copies of transcription and must pay all associated costs to the transcription services provider.

### **Exclusion of Witnesses**

The Board may ask a witness, or witnesses, to wait outside the hearing room until the witness is called upon to testify.

### **Swearing-In**

When a witness (including parties to the appeal) is called upon to testify, the witness may be asked to affirm that the evidence given to the Board panel will be true.

## Procedure at the Hearing

While Board hearings are not as formal as court proceedings, Board hearings are reasonably formal and parties are expected to act appropriately and politely. Although 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 hearing officer who will assist with the management of the hearing.
2. The chair will state the statutory authority for the Board 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. 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 or procedural requests.
6. The chair will then ask the parties for their opening statements, usually in the following order:
  - (1) Appellant
  - (2) Registrar

The appellant's opening statement is to include the grounds for appeal, the decision sought, the names of witnesses (if any) to be called and the approximate time required to put its case before the panel. The Registrar's statements should include the decision sought, the names of witnesses (if any) to be called and the approximate time required to put their cases before the panel.

7. The chair will advise the appellant to proceed with the presentation of its evidence. The appellant and his or her witnesses may be cross-examined by the Registrar. Members of the panel may also ask the witnesses questions. New information given in response to questions asked by the panel is subject to re-examination by the parties to the appeal.

8. The chair will advise the Registrar to proceed with the presentation of its evidence. The Registrar and his or her witnesses may be cross-examined by the appellant. Members of the panel may also ask the witnesses questions. New information given in response to questions asked by the panel is subject to re-examination by the parties to the appeal.
10. 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 will only be granted if the respondent called evidence that could not reasonably have been anticipated by the appellant.
11. The chair will request the parties to present a closing statement (argument) at the conclusion of all the evidence. **No new evidence will be accepted in the closing statement.**

The order of presentation is as follows:

- (1) Registrar
- (2) Appellant

**Note:** In some circumstances the panel chair will allow, or request that, the parties make their closing submissions to the Board in writing.

12. The chair will advise parties to the appeal that the hearing of evidence is concluded and the record is closed.

## Objections

If a party wishes to object to something in the hearing (e.g. questions or evidence), that party may raise an objection. An objection should be made in a courteous fashion stating the reasons for the objection. The Board will provide the other party(s) with an opportunity to respond before making a decision on the objection.

## Public Access

Section 41 of the *Administrative Tribunals Act* requires that an oral hearing is open to the public unless it is not practicable to hold the hearing in a manner that is open to the public or the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle of holding public hearings.

## Recording Devices

No recording devices may be used at a hearing without the permission of the Panel Chair. Generally, the Board discourages the use of all recording devices as they are not official accounts and are subject to independent editing. They may also make witnesses uncomfortable and result in a disruption in the proceedings.

A Panel Chair may allow audio tape recorders or other audio recording devices under the conditions below. No other recording devices are permitted during a proceeding.

Conditions:

1. Journalists must present an accreditation card or other proof that he or she is employed with, or under contract to, a newspaper, radio or television station.
2. Journalists must sign an undertaking that the recordings will be used only for the verification of the journalist's notes and not copied, distributed or broadcast in any way.

A person who uses a recording device without the Board's permission may be asked to leave the hearing and to leave all copies of the recorded information with the panel.

## **E. Evidence – File Reviews and Oral Hearings**

### **General**

In an appeal, 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 Board to decide the case a particular way. Oral evidence is restricted to oral hearings.

The rules of evidence, which apply to a hearing before the Board, are less formal than those applied by a court. The Board may accept evidence and information that the Board considers necessary, relevant and appropriate to the appeal, whether or not the evidence would be admissible in a court of law. The Board may also exclude any evidence it considers unduly repetitious. The Board cannot accept evidence that is inadmissible in a court because of a privilege under a law of evidence. The Board may be precluded from ordering disclosure of evidence because of the provisions of another provincial statute.

The Board may admit hearsay and circumstantial evidence if it is considered relevant. Relevance is the primary consideration for the Board 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. All evidence admitted during the hearing will be assessed by the Board to determine what weight, if any, should be given to the evidence. Generally speaking, evidence that is not sufficiently reliable for the Board's purposes will be given less weight when the Board is deciding the appeal.

### **Evidence that was not before the Registrar**

The Board may allow evidence to be presented in a hearing that was not before the Registrar. If the introduction of the new evidence comes as a "surprise" or there is insufficient time for the Registrar to adequately consider the evidence, the Board may



grant a short break to allow the Registrar to consider the information, or it may adjourn the hearing to another date.

### **Affidavit Evidence**

If a witness is unable to appear at the hearing to give oral testimony, the Board may allow a witness to provide affidavit evidence. An affidavit is a sworn statement. If the witness is to give evidence on an important issue in the appeal, the Board may order the witness to be available for cross-examination on his or her affidavit prior to or after the scheduled hearing.

### **Reopening a Hearing on the Basis of New Evidence**

Once the record is closed, no additional evidence will be accepted from the parties unless the Board 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.

### **The Board's Authority to Obtain Evidence (Extra-Record Facts)**

In discharging its mandate to decide an appeal, the Board may find it necessary to obtain and/or consider information not tendered by the parties to the appeal (not on the record of the proceeding). "Information" means factual or legal information. Before the Board considers such information, all parties will be given prior notice of this information, will be given access to or copies of the information, and will have an opportunity to make submissions and respond to the information.

## Decisions

### How a Decision is Made

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

In making its decision, the panel members are required to determine, on a balance of probabilities, what occurred and decide whether the administrative penalty should be rescinded (cancelled) or confirmed. The panel cannot vary a decision of the Registrar or reduce an administrative penalty.

### When a Decision will be Made

Pursuant to section 21 of the *Passenger Transportation Act*, the Board must give written reasons for a decision. Normally, a written decision will be rendered within a reasonable time following the hearing. On rare occasions, a decision may be rendered at the conclusion of an oral hearing. If this occurs, the panel will provide its written reasons within a reasonable time following the oral decision.

When a hearing has been conducted by written submissions, a final decision will be given in writing, with reasons, within a reasonable time after the last submissions were delivered to the Board's office.

The decision will be faxed and mailed to the appellant and the Registrar. The Decision will be published in the Passenger Transportation Board "Bulletin" and posted on the Board's website [www.ptboard.bc.ca](http://www.ptboard.bc.ca) . Decisions are normally posted on Wednesday.

### Review of Board Decisions

There is no right of appeal to the courts from a Board decision. Section 22 of the *Passenger Transportation Act* states that the Board has exclusive jurisdiction to hear and determine all matters of fact, law and discretion arising under the Act and these decisions are not open to review by the Courts. Nevertheless, a party dissatisfied with a decision or order of the Board may apply to the B.C. Supreme Court for a judicial review of the decision pursuant to the *Judicial Review Procedure Act*.

Section 21(4) of the *Passenger Transportation Act* provides the Board with a limited power of reconsideration. The board may reconsider, vary or rescind any decision made by it if the board is satisfied that (a) information has become available that was not available at the time the decision was made, or (b) there has been an error in procedure.

## Other Matters

### **Failure to Attend Proceedings**

Where notice of a preliminary meeting, pre-hearing conference or an oral hearing has been properly given and a party fails to attend, the Board may proceed in that party's absence.

### **Withdrawing or Abandoning an Appeal**

An appellant may withdraw his or her appeal by so informing the Board in writing.

### **Legal Counsel to the Board**

The Board may appoint and direct its legal counsel to:

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